



MAYOR AND COUNCIL AGENDA

NO. 4 DEPT.: Community Planning and Development Services DATE PREPARED: 6/21/05
STAFF CONTACT: Deane Mellander, Acting Chief of Planning FOR MEETING OF: 7/18/05

SUBJECT: Continued Discussion and Instruction to Staff--Concept Plan Amendment CPD1999-0004A, Falls Grove: To allow a hotel of 125,000 to 150,000 square feet in lieu of a corresponding amount of office; permit office development in lieu of multi-family development on a residual multi-family residential parcel; allow a child care facility as an approved use in Falls Grove; transfer unused retail space from the Village Center to one of the neighboring parcels.

RECOMMENDATION: Instruct staff to prepare resolution approving request.

The Planning Commission recommended approval of the proposed amendment. The staff recommended approval of the amendment to the Planning Commission. As part of the record, a signed agreement between the applicant and most of the residents of the neighboring condominiums was submitted.

DISCUSSION: The amendment proposes several changes to the approved concept plan for the Falls Grove Comprehensive Planned Development. The first is to redesignate two sites in the Falls Grove development as suitable for hotel or office use on either side of Blackwell Road fronting on Shady Grove Road. Only one of the parcels could be used for a hotel. The hotel would be between 125,000 and 150,000 square feet, replacing an equal amount of office/R&D space.

The second part of the request is to allow office use on a small parcel (approximately 1.4 acres) of land at the intersection of Wood Hill Road and West Montgomery Avenue. This parcel is currently designated for multi-family use, but the maximum allowable amount of multi-family in Falls Grove has already been approved for construction.

The third part of the request is to include a child care facility, an institutional use, as an approved use within Falls Grove. Currently, the Falls Grove Concept Plan does not allow institutional uses, as defined in Section 25-643(5)a of the Code.

Finally, the applicant requests that they be allowed to locate approximately 20,000 square feet of retail that was not built with approved Village Center on one of the two aforementioned office parcels. This would be in the form of ground-floor retail space in the remaining office buildings, principally in the proposed building on Parcel B. The executed agreement between the condo associations and the applicant limits any one retail tenant to 3,000 square feet, and entrances have to front onto Shady Grove Road. No convenience stores are permitted.

As part of the consideration of this amendment, Falls Grove has offered to abandon and relinquish the ability to develop 75 residential units of the remaining 119 units currently still available to build per the concept plan. Since all of the approved multi-family has been committed, any new units must be either one-family attached or detached. This would result in a new total of 1,486 units which is a reduction of the currently approved total of 1,530.

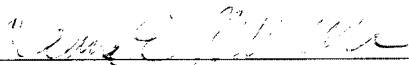
At the hearing on May 2, 2005, there was testimony both in support and in opposition to the proposed amendment. A summary of the testimony is included at Attachment 1. Additional submittals to the record are provided at Attachment 3 (circle pages 3 –25). The public hearing record closed on May 16, 2005. However, at the meeting on June 20, 2005, the Mayor and Council reopened the hearing record to receive additional new material. The new information is provided at Attachment 2.

The Mayor and Council began discussion of this item at their meeting on June 6, 2005. This is a continuation of that Discussion and Instruction session.

Boards and Commissions Review: The Planning Commission considered this application at its meeting on April 13, 2005. The Commission voted 4-0 with 3 absent to recommend approval. Its recommendation is shown on Attachment 2.

Next Steps: Following D&I, the Mayor and Council will instruct staff on preparation of a resolution regarding this application.

PREPARED BY:

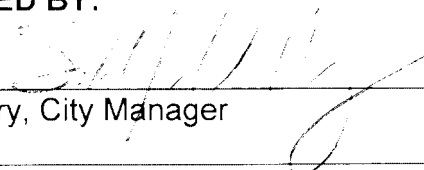

Deane Mellander, Acting Chief of Planning

APPROVED BY:


Arthur D. Chambers, AICP, Director, CPDS

7/11/05
Date

APPROVED BY:


Scott Ullery, City Manager

7/11/05
Date

LIST OF ATTACHMENTS:

1. Summary of public hearing testimony (circle pages 1-4).
2. Additional materials submitted following reopening of the hearing record (circle pages 5-17).
3. Public Hearing exhibits and correspondence submitted to the record (circle pages 18-38).
4. Planning Commission recommendation (circle pages 39-40).
5. Staff report to the Planning Commission (circle pages 41-46).
6. Applicant's initial statement (circle pages 47-87).
7. Location map (circle page 88).

**SUMMARY OF TESTIMONY FOR PUBLIC HEARING
HELD May 2, 2005
CPD1999-0004A
Fallsgrove Concept Plan Amendment**

Speaker**Summary of Testimony**

Art Fusillo – for the applicant	There will two connected facilities with a total of approximately 200 rooms—A Hilton Suites and a Garden Inn. The Garden Inn is a shorter stay suites facility. They are committed to the height, footprint, access points and parking as shown on the proposed plans. There will be separate detailed applications for the hotel and the 2 office buildings proposed. Jewish Social Services has expressed interest in the parcel at Wood Hill and Key West.
Art Goldberg, speaking for Jeffery Webber for Homes at Fallsgrove HOA	There are two issues remaining. There needs to be more convenient Ride-On bus service in the area, and the traffic problems at the entrance to the village center.
Nolan Sklute – Fallsgrove Condo Residence I	78 of the 97 unit owners now support the project – 91%, with the signed agreement. They were originally opposed, but after many meetings and much input and negotiation with the Lerner group, support can now be given.
Louise Bittker	She is a resident of condo 4. She is very concerned about the security situation if the hotel is approved. Leave the office buildings in place.
Richard Zeidman – President, Fallsgrove Condo Residence 3 and 4	He notes some inaccuracies in the cover letter from Holland and Knight. There are really 2 different hotels, with different clientele. The two small condo buildings do not support the proposed amendment. There are 15 hotels within 2 miles of this site. Is there a need for this one if there others aren't running at 100% occupancy? Queried the City Attorney about whether they met with the applicant prior to the April 13 meeting; did the Attorney express support for the application in the face of a threatened lawsuit?; did the Attorney advise the Planning Commission that they had overstepped their authority?. Mr. Zeidman believes that the office buildings will not be built. Also, offices if built do not operate 24/7, 365.
Stanley Scheiner	Recommends denial of the amendment. The hotel is incompatible with the condominium development. It is a false assumption that the office buildings are worse. They would not have bought in if they had known about the hotel. The Planning Commission originally recommended denial. There should not be a hotel next to residential.
Sid Verner	Under the agreement, there will be no open bar, and 24/7 security patrols at the hotel.
Thiel Sullivan – President, Fallsgrove Condo Residence 2	The condo wanted to reach a win-win agreement with the applicant. There will be a 75' tall hotel instead of a 125' tall office building. There will be much more surface parking instead of a tall parking garage. The buildings will be further away, there will be more landscaping, and traffic will be less.
Leonard Shapiro	Asked that those in the audience that support the application please stand. Many did. He believes that there is plenty of demand for extended stay hotels in this area.
Michael Messitte	They got most all of the accommodations that they wanted from the applicant. There is overwhelming support for the project from condos 1 and 2.
Elayne Scheiner	She lives in condo 2. She opposes the application for the same reasons as her husband, Stanley (above). She notes the comments made by the Planning Commission at its initial review of the application in December of 2004.

Larry Robinson – Secretary, Falls Grove Condo 1 Residence	The proposal will have the least impact on the community, per the Planning Commission's recommendation. There will be no open bars. Fully supports the Agreement.
Joan Oday	Lives in Building 2. She feels more secure with the proposed amendment than with offices on the site, especially the garages. The applicant will fence the condo areas. It will be much better than the construction trailers that are on the site now.
Ken Richter	Don't allow the hotel. Keep the area as open space instead. Don't add any more development. There needs to be a traffic study done before taking any further action on the amendment.
Dervy Satman	He notes that one of the illustrations in the applicant's submittal shows a bar.
Art Goldberg – President of the Falls Grove Civic Association	This process began last August. The applicant did not do his homework with the community initially. No one other than the condo residents had any issue with the hotel proposal.

Patricia A. Harris
301 215 6613
patricia.harris@hklaw.com

May 16, 2005

The Honorable Larry Giammo and
Members of the City Council
City Hall
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850

Re: Fallsgrove – Concept Plan Amendment

Dear Mayor Giammo and Members of the City Council:

On behalf of Lerner Enterprises (“Applicant”), we wanted to take this opportunity to respond to two issues raised by Councilwoman Hoffman and Mayor Giammo at the close of the May 2nd hearing on the proposed amendment to the Fallsgrove Concept Plan. These issues pertain to the proposed use of the Woodhill Road parcel and the desire for the Fallsgrove community to accommodate a child care center.

Woodhill Road Parcel

Councilwoman Hoffman inquired as to whether the Jewish Social Services, with whom Lerner is presently negotiating, was the appropriate tenant for the Woodhill Road building, given the City's desire for more research and development type uses. We are pleased to indicate that this issue was focused on intensely during the original Concept Plan approval process and to that end, the Fallsgrove Concept Plan Resolution has a built-in mechanism to ensure that upon build out, a balance is struck between traditional office use and research and development use, as defined therein. More specifically, the Fallsgrove Concept Plan Resolution No. 1-00 approving Fallsgrove, provides for a total of 950,000 square feet of office use and R&D use within the community, of which a maximum of 425,000 square feet is permitted to be general office space. Therefore, we believe the issue raised by Councilwoman Hoffman has been satisfied by the original Concept Plan approval.

Child Care Center

The Applicant has asked, as part of its Concept Plan amendment, that a child care facility be approved as an allowable use within the community. They have done so as a direct result of the fact that without the Mayor and Council's approval, such a use is not permitted. At the present

time, the Applicant has not designated a child care agency or facility to operate within Fallsgrove. As with other allowable uses, it hopes to avail itself of that opportunity in the future. Mayor Giammo and other members of the Council expressed strong interest in a child care center within the Fallsgrove community at some point and your desire is duly noted. The Applicant has taken the first step toward this objective by proposing an amendment to the Concept Plan which would provide for a child care facility as a permitted use.

At this time however, it is difficult for the Applicant to know when that use will materialize. At one time several years ago, the Applicant had considered childcare use within Fallsgrove, and in fact initiated the necessary approvals to accommodate such a use. For the record, as of this date, ten accredited child care centers have been established within one mile of Fallsgrove. Thus, it appears to the Applicant that the immediate demand for child care in the area has significantly decreased. Perhaps the strongest indication that there is not an immediate need for a child care facility in this area is the property directly across Darnestown Road from Fallsgrove, which has been approved for child care use for several years, yet has never gone forward. Nonetheless, the Applicant will continue to work toward a child care facility.

Summary

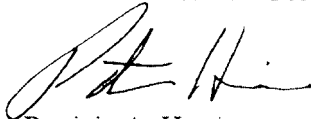
The proposed Concept Plan Amendment has strong support from the community.

The clear benefits of the Concept Plan Amendment are recognized by the vast majority of the Fallsgrove residents, and in particular, by those residents living in the nearby condominiums, as was evidenced by their testimony at the public hearing and their supporting correspondence.

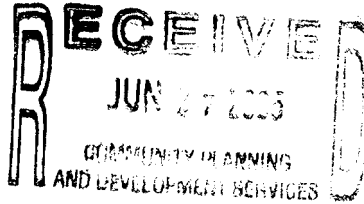
We appreciate your consideration of this important issue and respectfully request your approval of the proposed Concept Plan Amendment.

Sincerely yours,

HOLLAND & KNIGHT LLP



Patricia A. Harris



Patricia A. Harris
301 215 6613
patricia.harris@hklaw.com

June 22, 2005

Mayor Larry Giammo and Councilwoman Hoffman
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850

Re: Falls Grove Concept Plan Amendment

Dear Mayor Giammo and Councilwoman Hoffman:

On behalf of all those who have worked so hard on this over many months, we want to respectfully express our disappointment as to the discussion that occurred during the June 6th Discussion and Instruction on the proposed Falls Grove Concept Plan Amendment. As you are aware, the Amendment would, among other things, allow for the development of a hotel in lieu of office/R&D space within the Falls Grove community. The facts speak for themselves and it is undeniable that the revised plan benefits the entire community in so many ways. We are surprised by your reluctance to support this in light of the overwhelming show of support from the community. Given the importance of the Concept Plan Amendment to both the Applicant and the majority of the community, we trust that you will consider the following in support of the proposed hotel:

1. The Hotel Use is the More Appropriate Use for the Site

The vast majority of the community, the Planning Staff (from the outset) and the Planning Commission by unanimous vote, have all concluded that the hotel use is the preferable use for the site and from a land use perspective, a much more appropriate use. Importantly, this is not a subjective determination, but rather a determination based on objective, quantifiable data, including the following:

- a. Considerably lower trip generation -- 124 peak hour trips vs. 298 peak hour trips;
- b. Less required parking spaces -- 220 spaces vs. 600 spaces;
- c. Lower heights -- 6 stories vs. maximum of 12 stories;
- d. Enhanced view corridor -- Approximately 120 additional feet of distance provided between buildings as viewed looking west toward Shady Grove Road; and
- e. Significant amenities-- meeting rooms, health club, indoor pool vs. no amenities

In addition to these supporting facts, the value and benefits of including a hotel in communities such as Falls Grove is well recognized. Most recently, at the Urban Land Institutes' Washington Breakfast Series on June 8th, a panel of experts discussed the importance of including hospitality uses in mixed use communities, noting that they help to complete the "village-like" profile and complement the other uses typically present in a mixed use project. If you would like to have a tape of that program we could try to obtain one.

2. Consistent with the City's Recommended Approach, Applicant Spent Significant Amount of Time Working with Community

The Applicant's intensive cooperation, communication and outreach with the community are unprecedented for a project of this relative magnitude. In fact, the Applicant's commitment to the community outreach process is precisely the level of participation that the Mayor and Council and other City officials have indicated that they want to see and have previously encouraged. Consistent with the City's objective in encouraging this level of dialogue, the process helped formulate the ultimate plan and design of the project, in a manner acceptable to the interested parties. The success of this process is evidenced by the plans for the hotel, the proposed adjacent office building, and the Woodhill Road office that were presented to the Mayor and Council during the public hearing and which were a direct result of the cooperative effort between the Applicant and the community. Thus, you can appreciate our complete dismay when the discussion regarding the Amendment effectively discredited the entire process in which the Applicant and the community spent countless hours. In this case, the Applicant spent upward of 100 hours engaged in meetings and dialogue with the community; extensively modified its proposal to satisfy the community; obtained support from the vast majority of community residents in closest proximity to the proposed hotel use; and obtained recommendations of support from both the Planning Staff and the Planning Commission, with both entities recognizing that the Amendment provides a superior project from a land use perspective.

3. The Expectations of the Condominium Resident are in No Way Forfeited by the Approval of the Hotel

The Mayor and Councilwoman Hoffman's statement that the expectations of the residents would be thwarted by allowing the hotel to replace office use is simply erroneous. In fact, as was testified to at the public hearing and was also made apparent during the many meetings with the community, the expectation of many of the condominium residents as a result of misinformation provided by sales representatives of the condominiums (an entity totally unrelated to Lerner Enterprises) was that office buildings not to exceed four stories in height would be constructed on the subject parcels. Thus, in the minds of most of the condominium residents, the changes proposed by the Concept Plan Amendment which would limit the height of both the hotel and adjacent office use, actually bring the project much more in line with the expectations of the residents. In fact, it is precisely for this reason – the residents would rather have a six-story hotel and office instead of even taller office buildings – that the residents have been so vocal in their support of the Concept Plan Amendment. In addition, the community

recognizes that the level of intensity as well as the hours of operation of the offices use may vary dramatically from the more traditional 8:00AM to 5:00PM operation to a more intensive "24/7" operation, which is becoming increasingly common.

4. All Communities are By Nature, Evolving Changing Environments

In your consideration of the introduction of a new use to Falls Grove, there must be an acknowledgement of the evolving, changing nature of all communities -- whether planned communities, such as Kentlands, King Farm, Reston or Columbia or more strictly urban communities such as downtown Bethesda or Washington D.C. Whatever the area, the continuous evolution of these communities is essential to their long term health and vitality -- communities that do not evolve stagnate, and eventually deteriorate. The phenomenon of community evolution is apparent all around, in every community, on a daily basis. An example close to home is the relatively recent changes to Kentlands which include the conversion of a significant amount of retail space to residential use and the introduction of office use to the community. In King Farm, the Mayor and Council itself have been involved in the changes to that planned community, including the approval of a hotel use and a day care use. Other larger and very successful planned communities, including Reston and Columbia have dealt with many changes since their inception, some of which have been fairly dramatic in scope. In considering the nature of the change proposed by the Concept Plan Amendment, it is important to remember that Falls Grove was intended and planned as a mixed use community in the CPD Zone -- a zone which permits hotels. Thus, it is certainly a reasonable expectation that a mixed use community would or could include a hotel use.

In evaluating a proposed change to the fabric of a community, it is unrealistic, and practically infeasible, to expect 100 percent unanimity for a given change. The consideration in this instance, should be whether a significant majority of the individuals potentially affected by the change support it. Obviously, this test should be coupled with an objective analysis of the impacts of the proposed change. As previously indicated, in the case of the Concept Plan Amendment, the objective data clearly supports the hotel use in that it will generate less traffic, less parking, lower heights, wider view corridors and more amenities.

5. Conclusion

Members of the community have worked tirelessly with the Applicant in an effort to design a mutually satisfying project. We hope that the Mayor and Councilwoman Hoffman will recognize the commitment of the community, the time they have invested and their strong preference for development in accordance with the Concept Plan Amendment.

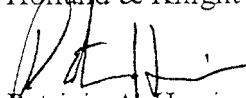
We respectfully request your careful re-consideration of this matter and the issues we have set forth above. We look forward to your further evaluation of the Concept Plan Amendment at your upcoming meeting on July 11, 2005.

Mayor Larry Giammo and Councilwoman Hoffman
June 22, 2005
Page 4

If you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,

Holland & Knight LLP



Patricia A. Harris

Enclosures

cc: Mr. Scott Ullery
Mr. Art Chambers
Mr. Deane Mellander
Mr. Art Fuccillo
Mr. Eric Hart

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RECEIVED
CITY CLERK'S OFFICE
Mr. and Mrs. Stamatis Fragoyannis
9403 Blackwell Road, Apt. 402
Rockville, MD 20850

June 12, 2005

Mayor Larry Giammo
Rockville City Hall
111 Maryland Avenue
Rockville, MD 20850

Routed To:

☒ Council

☐ City Clerk

☒ City Manager

☐ City Attorney

☐ Council Support Specialist

☒ Other Art Chambers

Dean Mellander

Dear Mayor Giammo:

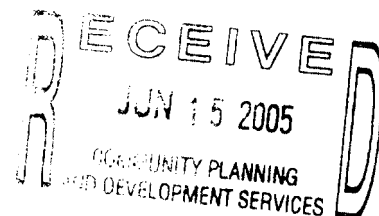
My wife and I moved into Falls Grove in April 2003. We were very excited to be moving into our "last" home and looked forward to enjoying life in this new community. We have been very upset, however, that Lerner wants to build two hotels right across the street from us. We also understand there is to be a bar in the hotels.

Before we moved here we were advised by the Bozzuto saleslady to check the master plan. We did and were ok with the office buildings that were supposed to be constructed. Now we have been here for over two years and all of a sudden there are going to be two hotels instead of the office buildings. I assure you we would not have moved here had we known two hotels would be right across the street.

We are devastated and disappointed that this is happening. We are concerned for our personal safety when we come home at night especially if there are a lot of transients that will be across the street all the time. **We do not like that and are scared.** We have heard nothing from Lerner that has put us at ease.

Please, sir, we urge you to vote against the two hotels and bar and just let the office buildings go up as originally promised. We hope you can convince your councilmembers to vote the same.

Stamatis Fragoyannis
Catherine Fragoyannis



Dear Mayor Giammo and Members of the city Council

I am a resident of the condominiums that are located near Blackwell and Shady Grove Roads in Falls Grove. I reside at 701 Falls Grove Drive Apt 103. I am very concerned about the discussion that took place during the Mayor and City Council meeting on Monday evening. It appears that the three persons in attendance are opposed to the Proposed Amendment to the Concept Plan, namely the construction of a hotel instead of an office Building.

I am disturbed by the rationale presented for your views. To say that some of the condominium owners purchased their condominiums with the expectation that a four story office building might be constructed next to them and you do not want to disappoint them makes little sense. This is particularly true when the developer, Lerner Corp. has the right under the existing Concept Plan to build not merely four story office building, but rather a 12 story office building. Most of the condominium owners would prefer the hotel over the potential for a huge office building and a accompanying parking garage. 41 of the 46 condominium owners in my building (CR II) who registered an opinion on the matter, favor a hotel. So do I. The figures in an adjacent condominium building (CR I) reflect 37 of the 42 favoring the hotel who registered an opinion. In fact, it is my understanding that close to 85% of this entire condominium community favors the hotel option. We do so for good reason.

Upon considering the alternative hotel amendment, it was brought to our attention that the hotel would generate less traffic and be less obtrusive than what was allowed to be built. I agree that the hotel would be a better choice. A hotel would be more in keeping with the residential nature of the surrounding area. The fact that the hotel will be a 24/7 operation means that the activity in and around the property will be monitored as apposed to an abandoned garage structure that would have no security at night. The board of director of Building I & II worked with the developer to craft a cooperative Agreement to allow the residents input into what would affect our development. Building a 12 story office building and accompanying garage structure would be totally against the wishes of close to 85% of the condominium owners who feel that a hotel would be a better choice. I urge you listen to and consider my views and those of the vast majority of my neighbors and approve the Amendment. Thank you for addressing our concerns

John W. Drascopoulos

John W. Drascopoulos

Routed To:

☒ Council

☐ City Clerk

☒ Manager

☐ City Attorney

☐ Council Support Specialist

☒ Other Act 10

☒ Deane M

2005 JUN 10 PM 2:20

RECEIVED
CITY CLERK'S OFFICE

*** MESSAGE: Here is the message we need to deliver. Please personalize it to suit your own style.**

Dear Mayor Giammo and Members of the City Council:

I am a resident of the condominiums that are located near Blackwell and Shady Grove Roads in Falls Grove. I reside at 9405 Blackwell Road # 305. I am very concerned about the discussion that took place during the Mayor and City Council meeting last evening. It appears that the three persons in attendance are opposed to the Proposed Amendment to the Concept Plan, namely the construction of a hotel instead of an office building.

I am shocked by the rationale you presented for your views. To say that some of the condominium owners purchased their condominiums with the expectation that a four story office building might be constructed next to them and you do not want to disappoint them makes little sense. This is particularly true when the developer, Lerner Corp, has the right under the existing Concept Plan to build not merely four story office buildings, but rather a 12 story office building. Most of the condominium owners would prefer the hotel over the potential for a huge office building and accompanying parking garage. 37 of the 42 condominium owners in my building (CR I) who registered an opinion on the matter, favor a hotel. So do I. The figures in an adjacent condominium building (CR II) reflect an even greater number favoring the hotel. In fact, it is my

understanding that over 80 % of this entire condominium community favors the hotel option. We do so for good reason.

Upon considering the alternative hotel amendment, it was brought to our attention that the hotel would generate less traffic and be less obtrusive than what was allowed to be built. I agree that the hotel would be a better choice. A hotel would be more in keeping with the residential nature of the surrounding area. The fact that hotel will be a 24/7 operation means that the activity in and around the property will be monitored as opposed to an abandoned garage structure that would have no security at night. The boards of directors of Buildings I & II worked with the developer to craft a cooperative Agreement to allow the residents input into what would affect our development. Building a 12 story office building and accompanying garage structure would be totally against the wishes of over 80% of the condominium owners who feel that a hotel as described in the Amendment would be a better choice. I urge you listen to and consider my views and those of the vast majority of my neighbors and approve the Amendment. Thank you for addressing our concerns. Please don't disappoint us.

Type Name--If husband and wife include both

BARBARA PESCHIN

Routed To:
☒ Council
☒ City Clerk
☒ City Manager

☐ City Attorney
☐ Council Support Specialist
☒ Other Art Chambers
Dear Madeline



Brenda Bean/RKV
06/07/2005 10:46 AM

To JSulli1209@aol.com
cc mayorcouncil@rockvillemd.gov
bcc
Subject Re: Fallsgrove - Concept Plan Amendment

Dear Mr. Sullivan,

I wanted to let you know that the Mayor and Council, as well as appropriate staff, have received your email and we appreciate you sending it along.

Thank you for your interest in this project.

Brenda F. Bean
Deputy City Clerk
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850
240-314-8281
email: bbean@rockvillemd.gov
fax: 240-314-8289

W

JSulli1209@aol.com



JSulli1209@aol.com
06/07/2005 10:27 AM

To mayorcouncil@rockvillemd.gov, bbean@rockvillemd.gov
cc
Subject Fallsgrove - Concept Plan Amendment

Dear Mayor Giammo and Members of the City Council

I was present at last night's May 6 City Council Meeting for the purpose of observing the discussion of the Proposed Amendment to the Fallsgrove Concept Plan. I support the positions advanced in the email letter sent to you this morning by Nolan Sklutdf Bozzuto Homes had properly created a single Home Owners Association instead of three for The Condominium Residences at Fallsgrove, then 85% to 15% support for the hotel option would still be a majority with a minority of the members in disagreement. In this case I do not believe the situation would be called divisiveness. In fact the three HOAs have cooperated under a Memorandum of Understanding in the operation, use, and maintenance of the General Common Areas upon which the four buildings are located.

At both the Planning Commission Meeting held on April 2005, and the Mayor and Council Meeting held on May 2, 2005, I publicly stated that the majority of the owners/residents of The Condominium Residences of Fallsgrove preferred the hotel option to the building of two tall office buildings and two tall parking structures. This preference is based on less traffic, less impact on street parking, better security, greater distance from the condominium buildings to the shorter height hotel building, no multi-level parking garage on the hotel parcel, less impact on the current vistas, better landscaping on the parcels, etc.

I highly recommend you to reconsider the views and positions expressed at last night's meeting

Respectfully submitted,

Thiel Sullivan
President, Condominium Residences II of Falls Grove
701 Falls Grove Drive #04
Rockville, MD 20850
301-545-0466
240-535-1799 (cell)



Brenda Bean/RKV
06/07/2005 10:44 AM

To "Leonard Shapiro" <ljshapiro@comcast.net>
cc mayorcouncil@rockvillemd.gov
bcc
Subject Re: Falls Grove Concept amendment

Dear Mr. Shapiro,

I wanted to let you know that the Mayor and Council received your email and we appreciate you sending it along.

Thanks very much for your note and for your interest in this project.

Brenda F. Bean
Deputy City Clerk
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850
240-314-8281
email: bbean@rockvillemd.gov
fax: 240-314-8289

"Leonard Shapiro" <ljshapiro@comcast.net>



"Leonard Shapiro"
<ljshapiro@comcast.net>
06/07/2005 10:01 AM

To <mayorcouncil@rockvillemd.gov>
cc <bbean@rockvillemd.gov>
Subject Falls Grove Concept amendment

Dear Mayor and Council,

At the hearing last night for the Amendment to The Falls Grove Concept Plan some inaccuracies were presented that seemed to impact the opinions of the Mayor and Council's decisions regarding the hotel office building. Firstly, most of the buyers of Bozzuto condominiums, including myself, were told, incorrectly, by a Bozzuto sales representative that if any buildings were to be built on the vacant parcels fronting the condominiums they would be similar to the other medical buildings that already exist on Shady Grove Rd. This was clearly not the case if the buyers looked at the promotional brochure that was given to them. The illustration of what was to go there was clearly a large office building (150,000 sq. ft) with attendant garage structure. This did not impact my decision to buy because I do not face them directly and frankly didn't care at that time. Upon considering the alternative hotel substitution, it was brought to my attention that the hotel would generate far less traffic and visually be more esthetic than what was permissible now and I agreed that the hotel would be a better choice. In addition, I felt that a hotel would be more in keeping with residential nature of the surrounding area. The fact that hotel was 24/7 operation I took as a positive in that there would be active monitoring of activity in and around the property as opposed to an abandoned garage structure in the evening and nighttime that could shelter any manner of undesirable conduct.

Secondly, as board member of Building I participated in the drafting of a cooperative Memorandum Of Understanding with the developer to garner input into what would impact on our development and through this process we got the support of 80% of the resident owners that this was a better project than what was originally planned.

To say that the residents would be disappointed in not getting a 2 story office building and attendant garage structure would be highly contrary to the majority. Yes, there are some owners who feel, for one reason or another, that the hotel will negatively impact their property and lifestyle. 80% feel otherwise. We urge you to bow to the choice of the majority and approve the Amendment. Thank you for consideration and for your desire to make Rockville a wonderful place to live.

Leonard J Shapiro
9405 Blackwell Rd
Apt 312

Rockville MD 20850-3683
Phone & Fax 301-340-6164
Cell Phone 240-606-7036



Brenda Bean/RKV
06/07/2005 08:38 AM

To Nsklute@aol.com
cc mayorcouncil@rockvillemd.gov
bcc
Subject Re: (no subject)

Dear Mr. Sklute,

I wanted to let you know that the Mayor and Council received your email and we appreciate you sending it along.

Thank you, again, for your interest.

Brenda F. Bean
Deputy City Clerk
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850
240-314-8281
email: bbean@rockvillemd.gov
fax: 240-314-8289

Nsklute@aol.com



Nsklute@aol.com
06/07/2005 12:01 AM

To mayorcouncil@rockvillemd.gov
cc bbean@rockvillemd.gov
Subject (no subject)

Mayor Larry Giammo and Members of the City Council
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850

Re: Falls Grove – Concept Plan Amendment

Dear Mayor Giammo and Members of the City Council:

I was present at this evening's Mayor/City Council Meeting for the purpose of observing the discussion of the Proposed Amendment to the Falls Grove Concept Plan. Towards the end of the discussion of this matter, I attempted to clarify statements that were made which I believe resulted in an inaccurate representation of certain points and caused inappropriate conclusions to be drawn; however, I was advised to address the matter via e-mail. I am doing so herein as a condominium owner and as President of the Association representing Condominium Residences I of Falls Grove.

A portion of this evening's discussion focused on the expectation of the condominium owners at the time they purchased their units. In general, it was stated that the condominium owners expected office buildings would be built, and it would now be inappropriate (after all units had been purchased) to change the Concept Plan and allow a hotel to be constructed. This statement is not entirely accurate and has resulted in questionable conclusions carrying serious, long-term negative consequences.

There was testimony before the Planning Commission and the Mayor/City Council concerning the understanding of many unit owners at the time of purchase in regard to permissible construction on adjacent parcels. The testimony reflects many unit owners were advised by sales personnel of the condominium developer that office buildings might be constructed on adjacent lots and would be four story structures similar to those now in existence. Many purchases were made based on that premise, albeit contrary to some of the sales literature and an inaccurate rendition of what in fact is authorized in the current Concept Plan. The reality of the situation, as confirmed by the Planning Commission, is that the developer of the adjacent parcels is authorized to construct office buildings comprising 250,000 sq ft and up to 12 stories in height, plus necessary parking structures. To say that this is what the condominium owners expected and now want is absolutely incorrect. Given the potential for an end result that does not comport with their expectations, the vast majority of the unit owners strongly support the hotel option.

A point was raised concerning the divisiveness the hotel proposal has created. It is absolutely correct to say that approximately 85% of the unit owners support the hotel option and 15% oppose it. Communities have many issues which produce differing views, such as the one under consideration, raised on a daily basis. This certainly does not mean, however, that the status quo should be maintained when the vast majority favor another position. To maintain the status quo concerning the current Concept Plan under the facts presented is not "giving the condominium owners what they expected and now want." It is giving them something they did not expect and do not want, in the face of a proposal which the vast majority favor.

Thank you for affording me the opportunity to correct what I believe is an inaccurate portrayal of facts critical to the issue before you. I urge you to reconsider the views and positions expressed this evening, in view of the realities of the situation.

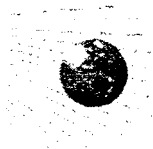
Respectfully submitted,

Nolan Sklute
President, Condominium Residences I of Fallsgrove
9405 Blackwell Road #213
Rockville, MD 20850
301-424-5160
202-421-5224(C)

☒ City Clerk
☒ City Manager

☐ Council Support Specialist
☒ Other Art Chambers

Attachment 3



Brenda Bean/RKV
04/15/2005 11:28 AM

To Nsklute@aol.com
cc Mayor_Council, Art Chambers/RKV
bcc
Subject Re: Rockville Mayor/City Council Meeting, May 2,
2005--Falls Grove Concept Plan

Dear Mr. Sklute,

Thank you very much for your follow up email explaining the documents you dropped off with this office earlier today. The documents you provided, along with your email, will be reviewed by the Mayor and Council and marked as an exhibit for incorporation into the official file.

We appreciate your interest in this project and look forward to seeing you at the public hearing on May 2, 2005 at 7:00 pm.

Brenda F. Bean
Deputy City Clerk
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850
240-314-8281
email: bbean@rockvillemd.gov
fax: 240-314-8289

Exhibit # 1
Subject: Falls Grove CPD1999-
0004
Public Hearing Date: 5/2/05

Nsklute@aol.com



Nsklute@aol.com
04/15/2005 11:25 AM

To bbean@rockvillemd.gov
cc
Subject Rockville Mayor/City Council Meeting, May 2,
2005--Falls Grove Concept Plan

Dear Ms. Bean

This morning, April 15, 2005, I furnished the Office of the Rockville City Clerk six (6) copies of an agreement dated 13 April 2005, that is directly related to the Proposed Amendment to the Falls Grove Concept Plan to be considered at the Mayor /City Council meeting on May 2, 2005. I respectfully request that this document be made an exhibit for the meeting, and that it be included in the record. The Agreement consists of 13 pages and Exhibits A through F.

Parties to the agreement are the Developer/Applicant and the two associations representing 97 of the 119 condominiums at the Condominium Residences of Falls Grove. The agreement was discussed, in part, during the April 13, 2005, meeting of the Rockville Planning Commission, when the Proposed Amendment to the Falls Grove Concept Plan was addressed.



Brenda Bean/RKV
05/09/2005 09:01 AM

To "louise bittker" <lbittker@comcast.net>
cc mayorcouncil, Art Chambers/RKV@RKV, Deane
Mellander/RKV@RKV
bcc
Subject Re: Letter to Mayor Giammo

Dear Ms. Bittker:

Thank you for your email regarding the amendment to the Falls Grove Comprehensive Planned development. Your comments, which have been seen by the Mayor and Council, as well as other appropriate staff, will be considered and incorporated into the official record in this matter. The Mayor and Council appreciate the comments they receive from citizens as they deliberate this, and other important matters.

This item will come back before the Mayor and Council several more times before final action which will like occur by the end of June. So that you can track this matter, I would be happy to add your name to our Mayor & Council Agenda listserv group which would allow you to receive the agenda via email three or four days before each meeting. If you are interested in this service, please let me know.

Thanks again for taking the time to write. If you would like to submit anything further before the record closes on May 16th, please feel free to do so.

Brenda F. Bean
Deputy City Clerk
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850
240-314-8281
email: bbean@rockvillemd.gov
fax: 240-314-8289

"louise bittker" <lbittker@comcast.net>



"louise bittker"
<lbittker@comcast.net>
05/07/2005 04:31 PM

To <mayorcouncil@rockvillemd.gov>
cc
Subject Letter to Mayor Giammo

Dear Mayor Giammo;

This letter is to inform you that I am firmly against the construction of TWO one hundred room hotels directly across from my Falls Grove condominium. This is total over and unnecessary development. No one benefits except Lerner Developers and Falls Grove Associates. Rockville and Falls Grove do not need TWO eight story buildings with two hundred rooms. We are better served with one twelve story building, if necessary, even though we don't want that. It would be less bulk staring us in our faces and less every day problems.

We asked Lerner Associates for underground parking to avoid the necessity of their threatened massive parking structures. They totally refused. Their "negotiation" was to provide us with the TWO eight story

towers instead.

Research and Development is not on their agenda. Neither is Day Care. They have neither any plans nor any interest in either.

We do not want to be a gated community. We are not physically set up for it. We can barely get our cars in as it is now. Gates would make it impossible for emergency or service vehicles to easily and rapidly enter our community.

Traffic and parking are serious issues for us. The proposed hotels with their entrances and exits on Blackwell will absolutely destroy our security and create multiple problems for us.

Please vote against construction of these hotels. There are many roads to Mecca. Let's find one that works for all of the citizens of Fallsgrove and Rockville - not just for Lerner Developers.

Thank you.

Louise Bittker
9407 Blackwell Road Unit #401
Rockville, MD 20850
301-738-8786



Brenda Bean/RKV
05/11/2005 11:56 AM

To "Jennifer Lee" <jlee@Pentagontitle.com>
cc mayorcouncil@rockvillemd.gov, Art Chambers/RKV@RKV,
Deane Mellander/RKV@RKV
bcc
Subject Re: CPD 1999-0004A Fallsgrove

Dear Ms. Lee,

Thank you for your email regarding the amendment to the Fallsgrove Comprehensive Planned development. Your comments, which have been seen by the Mayor and Council, as well as other appropriate staff, will be considered and incorporated into the official record in this matter. The Mayor and Council appreciate the comments they receive from citizens as they deliberate this, and other important matters.

The public hearing on this application was held May 2, 2005 at 7:00 pm, and it will come back before the Mayor and Council several more times before final action which will like occur by the end of June. So that you can track this matter, I would be happy to add your name to our Mayor & Council Agenda listserv group which would allow you to receive the agenda via email three or four days before each meeting. If you are interested in this service, lease let me know.

Thanks again for taking the time to write. If you would like to submit anything further before the record closes on May 16, 2005 at 5:00 pm, please feel free to do so.

Brenda F. Bean
Deputy City Clerk
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850
240-314-8281
email: bbean@rockvillemd.gov
fax: 240-314-8289

"Jennifer Lee" <jlee@Pentagontitle.com>



"Jennifer Lee"
<jlee@Pentagontitle.com>
05/11/2005 11:20 AM

To <mayorcouncil@rockvillemd.gov>
cc
Subject CPD 1999-0004A Fallsgrove

My name is Jennifer Lee and I reside on 9407 Blackwell Road Unit 201 in the Fallsgrove Community. The reason for my email is the amendment to the original proposal. My concern is not the view, or the lighting, or many of the other concerns that my fellow residents were concerned about. My main concern is the security for myself and my family. Two hotels being built across the street (Blackwell Road and Woodhill Road) from where I live elevates the likelihood that someone who is not a resident come onto my/our property and trespass. There are many scenarios that can be thought up but mainly the hotels are not high end, nor are they extended stay, will bring in people that are not welcome to roam our neighborhood.

Many of the residents on the other side of our condominiums are renters. They are not living at the property as their home. 9405 and 9407 Balckwell Road consist of residents that consider their condominium a PERMANENT primary resident. The renters were FOR the building of the hotels on Blackwell Road and Woodhill Road. They worked out an agreement with the builder. Although ugly to say those residents are not directly affected by the hotels so therefore they should not have a vote that is weighed heavier than our opinion. Our concerns should be addressed prior to theirs as we are the ones who will have to live with the consequences.

I propose that the location of the hotels be moved to the plot of land on West Montgomery Road and Fallsgrove Drive. This move will alleviate traffic, parking, lighting, etc. for our residents and most importantly security. This change will also make the residents who voted FOR the hotels have direct use of their facilities. As our residents who were against the hotels did not sign the agreement for the use of the hotels facilities. The land in front of us can be used for the tennis courts and the community recreation. Originally the tennis courts were to be built on West Montgomery and Fallsgrove but if these two were switched than it would address all of our concerns. Please consider this change as it will greatly affect all of the residents homes.

Sincerely, Jennifer

Lee



Brenda Bean/RKV
05/06/2005 02:43 PM

To "Alan Sheff" <asheff@drfirst.com>
cc mayorcouncil@rockvillemd.gov, Art Chambers/RKV@RKV,
Deane Mellander/RKV@RKV
bcc
Subject Re: Falls Grove development

Dear Dr. Sheff,

Thank you for your email regarding the amendment to the Falls Grove Comprehensive Planned Development. Your comments, which have been seen by the Mayor and Council, as well as other appropriate staff, will be considered and incorporated into the official record in this matter. After the record closes on May 16th, the matter will come back before the Mayor and Council for discussion and instruction, then introduction of resolution, with final action likely to occur at the Mayor and Council meeting of June 20th. So that you can track this matter, I am happy to add your email address to our Mayor & Council Agenda subscription list which would allow you to receive the agenda via email three or four days before the meeting. If you are interested in this service, please let me know.

In the meantime, thanks very much for your interest in the Falls Grove Development. The Mayor and Council appreciate the comments they receive from citizens as they deliberate this, and other important matters. If you would like to submit anything further before the record closes on May 16th, please feel free to do so.

Brenda F. Bean
Deputy City Clerk
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850
240-314-8281
email: bbean@rockvillemd.gov
fax: 240-314-8289

"Alan Sheff" <asheff@drfirst.com>



"Alan Sheff"
<asheff@drfirst.com>
05/06/2005 12:05 PM

To <mayorcouncil@rockvillemd.gov>
cc
Subject Falls Grove development

Mr. Mayor,

I write to oppose the Lerner plan for development of the remaining parcel at Falls Grove on Shady Grove Road. I am a member of the Homes At Falls Grove board of directors which represents Pulte single family homeowners. Although this project is not immediately adjacent to my home I believe proceeding with construction as proposed by Lerner would have a negative impact on the community as a whole.

First, it has not been shown that there is a need for two hotels at this site.
Second, the impact of increased vehicular traffic on the community has not been sufficiently evaluated.
Third, the relationship between this property and the adjacent condominiums has not been specified – barrier fencing, landscaping, parking.

I appreciate your attention to this matter.
Respectfully,

Alan R. Sheff, M.D.
MDVIP affiliated physician

President, Potomac Physician Associates
10215 Fernwood Rd., Suite 100
Bethesda, MD 20817

tel: (301) 493-9607
fax: (301) 493-5532

asheff@drfirst.com

Add me to your address book...

Want a signature like this?



Brenda Bean/RKV
05/09/2005 08:51 AM

To MDSILAS@aol.com
cc mayorcouncil, Art Chambers/RKV@RKV, Deane
Mellander/RKV@RKV
bcc
Subject Re: Citizen Input to Falls Grove Associates' Request to
Amend CPD1999-0004A

Dear Mr. and Mrs. Silas,

Thank you for your email regarding the amendment to the Falls Grove Comprehensive Planned development. Your comments, which have been seen by the Mayor and Council, as well as other appropriate staff, will be considered and incorporated into the official record in this matter. The Mayor and Council appreciate the comments they receive from citizens as they deliberate this, and other important matters.

This item will come back before the Mayor and Council several more times before final action which will like occur by the end of June. So that you can track this matter, I would be happy to add your name to our Mayor & Council Agenda listserv group which would allow you to receive the agenda via email three or four days before each meeting. If you are interested in this service, please let me know.

Thanks again for taking the time to write. If you would like to submit anything further before the record closes on May 16th, please feel free to do so.

Brenda F. Bean
Deputy City Clerk
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850
240-314-8281
email: bbean@rockvillemd.gov
fax: 240-314-8289

MDSILAS@aol.com



MDSILAS@aol.com
05/07/2005 01:55 PM

To mayorcouncil@rockvillemd.gov
cc
Subject Citizen Input to Falls Grove Associates' Request to Amend
CPD1999-0004A

Please review the attachment as part of the consideration of the Application of Falls Grove Associates to Amend its Comprehensive Planned Development (CPD) Application – CPD1999-0004A, for which a hearing was held on Monday, May 2, 2005.

Thank you,

Richard & Audrey Silas
9407 Blackwell Road, #302
Rockville, MD 20850

May 7, 2005

E-Mail to: Mayor & Council of Rockville, MD

RE: Application of Falls Grove Associates to Amend its Comprehensive Planned Development (CPD) Application – CPD1999-0004A

Dear Mayor Giammo and Members of the City Council:

Due to another commitment we were unable to attend the hearing on May 2, 2005, wherein you and your colleagues heard the request of Falls Grove Associates to amend its CPD by substituting a six-story 200 Room Hotel (two buildings comprised of a business hotel and an extended stay hotel) on the left side of Blackwell Road where it intersects with Shady Grove Road and Blackwell Road and a five-story hotel and garage on the right side of Blackwell Road where it intersects with Shady Grove Road.

My wife and I are residents of 9407 Blackwell Road, #302, one of the two small condominium buildings that comprise Condominium Residences III & IV of Falls Grove, Inc. We reside in one of the two buildings that directly face the proposed hotel as well as the office building.

I was advised that the record would remain open for additional comments until May 16, 2005; thus, we are taking the opportunity to have our voices heard. The purpose of our e-mail is threefold as follows:

First, we wish to advise you that we also oppose the building of a hotel for the numerous reasons mentioned during the hearing on May 2, 2005. You should know that 100% of our Board of Directors and 90% of our unit owners that we were able to contact were opposed to the hotel. Unfortunately, our limited numbers (22 unit owners) are dwarfed by the two other larger condominium associations (97 unit owners) and do not have the numbers that can match those of the two larger buildings.

Second, security and traffic continue to be issues of concern to us. Louise Bittker, our upstairs neighbor provided you with a keen insight on the security issue. No one will be patrolling the grounds of the hotels at night. What they will and will not have regarding working security cameras and signage to indicate video surveillance is unknown to us at this time. Simply having a person at the front desk of the hotel, who likely cannot leave his/her post to address a concern and who would have little or no security training, is absolutely insufficient and will likely be too little too late.

The third issue, that of traffic, will be an issue. At the end of the hearing, you asked if there were other things the community asked for, but which did not get addressed by Fallsgrove Associates, you wanted to be made aware of these items. One issue that although addressed by Fallsgrove Associates in the MOU (Item #10 on page 6 of the MOU) was the egress to the proposed parking structure for the five-story office building. We wanted to emphasize its importance, as your approval will help reduce the traffic on Blackwell Road, an issue that also is of ongoing concern to all of our residents.

Art Fusillo advised us that he was supportive of such an egress between the two properties, but you have the control.

In summary, if you and your colleagues reach a conclusion that you do permit Goliath to beat David with the threat of two unacceptably high office buildings as the alternative because of the action of a prior Mayor & Council, **we urge you to require the following of the developers in approving the requested CPD Amendment:**

1. **Require working video surveillance 24/7/365 for the hotel,**
2. **Require hourly surveillance by a security firm between 7:00 P.M. and 6:00 A.M. seven days per week,**
3. **Approve establishment of a small roadway between the two existing medical office buildings and the proposed five-story office building for the office building traffic to egress and mandate that the developer build the road to permit it to be implemented.**

Thank you for your consideration.

Richard & Audrey Silas
Phone: (301) 340-8413

To: Rockville Mayor and City Council

The following is a submission for the record in the captioned matter, submitted on behalf of the condominium owners of Condominium Residences I and Condominium Residences II of Fallsgrove.

1. UNIT OWNER PREFERENCES: The Proposed Amendment to the Fallsgrove Concept Plan has overwhelming support from the Condominium Residences of Fallsgrove, which includes a total of 119 condominiums. As was demonstrated at the May 2nd meeting, this condominium community is the residential area most significantly impacted by the Proposed Amendment. The following discussion focuses on the degree of support registered by the condominium owners.

A. The Condominium Residences of Fallsgrove consists of four (4) buildings with a combined total of 119 condominium units, as follows: Building I with 49 units; Building II with 48 units; and Buildings III and IV with a combined total of 22 units. There are three condominium associations representing the unit owners in these four buildings--Building I and Building II each have a separate association, and Buildings III and IV have one association. [Note: While the term "building" is used herein for simplification, the term "Condominium Residences" is the formal term used to denote each of the four condominium buildings--thus Condominium Residences I, Condominium Residences II, and so forth. The abbreviation CR is often used in lieu of "Condominium Residences."]

B. Unit owners in Buildings I and II registered their preferences for or against the Proposed Amendment, following a number of association meetings, both formal and informal, as well as countless one-on-one sessions with members of their association board of directors. These meetings and individual sessions included discussions about the Proposed Amendment, focusing on the planned hotel, and the terms of the agreement which the two associations representing Buildings I and II had negotiated with the Applicant/Developer. The pros and cons of the Proposed Amendment were explored, in an effort to ensure the unit owners were well informed of the situation before registering their preferences.

C. Of the 97 units in Buildings I and II, the preferences for and against the Proposed Amendment, namely the planned hotel, were as follows:

FOR	78
AGAINST	8
ABSTAIN	3
DID NOT REPLY	8

Thus, of the 86 unit owners indicating a preference, 91% support the Proposed Amendment, with the planned hotel. [Note: The foregoing breakout was presented during the course of the hearing on May 1st.]

D. The undersigned do not know the precise breakout of the preferences of the 22 unit owners in Buildings III and IV, as this information was not shared with the Planning Commission nor the Mayor and City Council. Perhaps a written submission for the record in this matter will reveal such information. Prior to the Planning Commission Meeting on April 13th, we were advised that a total of 12 unit owners in those two buildings opposed the hotel. We do not know the official preferences of the other Unit Owners; however, based on informal conversations we know there are some that favor the hotel.

2. THE AGREEMENT WITH THE APPLICANT/DEVELOPER:

A. While the two associations representing Buildings I and II entered into the agreement with the Applicant/Developer, the association representing Buildings III and IV chose not to do so. They had every opportunity to participate in negotiations and, in fact, did so at the outset. They also had every opportunity to become a party to the agreement, and were invited to do so by the associations representing Buildings I and II. They declined. However, the benefits of the agreement flow to the entire condominium community, including Buildings III and IV.

B. The agreement, which is part of the record before the Mayor and City Council, represents several months of discussions with representatives of the Applicant/Developer and the associations representing Buildings I and II. We urge that the land use provisions of the agreement be incorporated into the Falls Grove Concept Plan. Such provisions include those relating to access roads into the hotel and the Shady Grove Road/Wood Hill Road office building and parking structure; the height and general design of these three buildings; the general landscaping design surrounding the three buildings; signage; lighting; the parking lot for the use of condominium residents and guests; and fencing for certain areas of the condominium community and traffic gates.

C. The agreement involved significant negotiations and compromise by all parties. The terms of the agreement were discussed with the unit owners of Buildings I and II, to ensure they supported its terms, before it was executed by authorized representatives of the two associations. While there were one or two comments made at May 2nd hearing characterizing this situation as one akin to "David and Goliath," with the Applicant /Developer being the latter, this bears no resemblance to what transpired. The associations representing Buildings I and

It had the benefit of several unit owner attorneys, as well as a retained zoning lawyer. The end result of this entire process which resulted in a strong show of support for the Proposed Amendment to the Falls Grove Concept Plan is a win-win situation for all concerned: the condominium community, the Falls Grove Community at large; the City of Rockville; and the Applicant/Developer.

D. A close working relationship has developed between the Applicant/Developer and those within the condominium community that chose to participate in the foregoing process. This relationship has served to enhance communications between the community and the Applicant-Developer and provides a vehicle for community input into the development and planning processes.

3. THE SECURITY ISSUE

During the May 2nd hearing several comments were made about the "security threat" arising from the proposed hotel. Considering the strong show of support for the hotel, one would question the reality of the called "threat." The 24/7 nature of the hotel and the security provisions that are advanced adequately address this issue. To say that a large office building, with an adjacent parking structure would present less of a risk is baseless. In this regard, it should be noted that the condominium unit owners have always been aware that the hotel would have a limited service bar, one intended for hotel patrons.

In conclusion, it is urged that you approve the Proposed Amendment to the Falls Grove Concept Plan and incorporate into the Concept Plan the land use provisions of the Agreement entered into by the undersigned and the Applicant/Developer, as discussed herein.

Respectfully submitted by:

Nolan Sklute
President
Condominium Residences I of Falls Grove, Inc.

Thiel Sullivan
President
Condominium Residences II of Falls Grove, Inc



Brenda Bean/RKV
05/09/2005 09:01 AM

To "louise bittker" <lbittker@comcast.net>
cc mayorcouncil, Art Chambers/RKV@RKV, Deane Mellander/RKV@RKV
bcc
Subject Re: Letter to Mayor Giammo

Dear Ms. Bittker:

Thank you for your email regarding the amendment to the Fallsgrove Comprehensive Planned development. Your comments, which have been seen by the Mayor and Council, as well as other appropriate staff, will be considered and incorporated into the official record in this matter. The Mayor and Council appreciate the comments they receive from citizens as they deliberate this, and other important matters.

This item will come back before the Mayor and Council several more times before final action which will like occur by the end of June. So that you can track this matter, I would be happy to add your name to our Mayor & Council Agenda listserv group which would allow you to receive the agenda via email three or four days before each meeting. If you are interested in this service, please let me know.

Thanks again for taking the time to write. If you would like to submit anything further before the record closes on May 16th, please feel free to do so.

Brenda F. Bean
Deputy City Clerk
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850
240-314-8281
email: bbean@rockvillemd.gov
fax: 240-314-8289

"louise bittker" <lbittker@comcast.net>



"louise bittker"
<lbittker@comcast.net>
05/07/2005 04:31 PM

To <mayorcouncil@rockvillemd.gov>
cc
Subject Letter to Mayor Giammo

Dear Mayor Giammo;

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We asked Lerner Associates for underground parking to avoid the necessity of their threatened massive parking structures. They totally refused. Their "negotiation" was to provide us with the TWO eight story

towers instead.

Research and Development is not on their agenda. Neither is Day Care. They have neither any plans nor any interest in either.

We do not want to be a gated community. We are not physically set up for it. We can barely get our cars in as it is now. Gates would make it impossible for emergency or service vehicles to easily and rapidly enter our community.

Traffic and parking are serious issues for us. The proposed hotels with their entrances and exits on Blackwell will absolutely destroy our security and create multiple problems for us.

Please vote against construction of these hotels. There are many roads to Mecca. Let's find one that works for all of the citizens of Falls Grove and Rockville - not just for Lerner Developers.

Thank you.

Louise Bittker
9407 Blackwell Road Unit #401
Rockville, MD 20850
301-738-8786



Brenda Bean/RKV
05/16/2005 09:35 AM

To "grace zhou" <amaingrace@hotmail.com>
cc mayorcouncil@rockvillemd.gov, Art Chambers/RKV@RKV,
Deane Mellander/RKV@RKV
bcc
Subject Re: From Falls Grove condominiums

Dear Ms. Zhou:

Thank you for your email regarding the amendment to the Falls Grove Comprehensive Planned development. Your comments, which have been seen by the Mayor and Council, as well as other appropriate staff, will be considered and incorporated into the official record in this matter. The Mayor and Council appreciate the comments they receive from citizens as they deliberate this, and other important matters.

The public hearing on this application was held May 2, 2005 at 7:00 pm, and the record closes at 5:00 pm today. This item has several more steps to go through before it comes back for final action, which will likely occur by the end of June.

Thanks again for taking the time to write and for your interest in this project.

Brenda F. Bean
Deputy City Clerk
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850
240-314-8281
email: bbean@rockvillemd.gov
fax: 240-314-8289

"grace zhou" <amaingrace@hotmail.com>



"grace zhou"
<amaingrace@hotmail.com>
05/14/2005 01:59 AM

To mayorcouncil@rockvillemd.gov
cc
Subject From Falls Grove condominiums

Dear Mayor & Council,

I am a resident of Falls Grove condominiums, I oppose that a two hotels or office will be built across the street, because it will cause a lot of problems (traffic, safety, noise, parking, vista...) in the future, our living environment will be totally changed, so please consider about it, we need a good place to live. Thank you very much!!!

Grace Zhou

9407 Blackwell Rd #205

Routed To:
☒ Council
☐ City Clerk
☒ City Manager

☒ City Attorney
☐ Council Support Specialist
☒ Other Act
Deane

Exhibit # 11 *L. Deane*

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Subject: CPD99-00041A
2005 MAY 13 AM 11:12
Public Hearing Date: 5/2/05

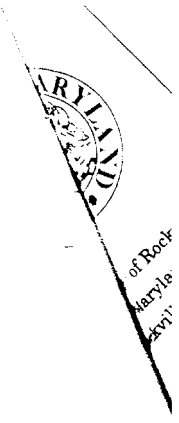
Mayor Giammo and City Council Members

Thank you for the opportunity to comment further on the Falls Grove hotel vs office building on Parcel A at Shady Grove and Blackwell. Your careful assessment of the situation (not rushing to judgment) and your dedication to making Rockville the best place to live and work is commendable.

It needs to be stressed that the seven Planning Commissioners' strong objections to a hotel were summarily dismissed by the four Commissioners in attendance at the April hearing. Granted, the developer (having failed to communicate with Falls Grove residents) in an effort to win public approval, conducted open meetings at which impressive architectural renderings were shown, and then followed with closed meetings with condo board officers who subsequently negotiated the Memorandum of Understanding. How can Lerner's actions nullify the Commissioners' initial objections?

Following the December Planning Commissioners' decision, Mr. Fuccillo, true to Lerner's reputation for vindictive behavior, was overheard to threaten to build an "ugly office building-garage" on the site in question. Many condo residents, intimidated by the threat, agreed to negotiations supporting a hotel in exchange for minor concessions. As one neighbor admitted to me, "We aren't favoring a hotel, but are opposing the office building-garage Lerner promises as the alternative." She was a major participant in the campaign to persuade many to agree with this point of view. Some of the concessions agreed to in the MOU are: (1) use of the pool, exercise facility, and meeting rooms—we already have a pool, exercise facility, and meeting rooms, and a new community center is to be built in the near future at Falls Grove Dr. and Key West. (2) 20 parking spaces for the exclusive use of condo residents—what is to prevent hotel guests and/or personnel from parking there? (3) fencing with traffic gates to access our condo buildings—not everyone wants to live in a gated environment. The list goes on, but based on my premise that a hotel is not appropriate at this site, only the developer benefits.

Another not very compelling argument given by the developer is that Shady Grove Hospital patients' visitors would use the hotel. This hospital is not Johns Hopkins or the Mayo Clinic which cater to an international clientele, but a local community hospital—relatives or friends visiting from out of town would probably stay at patients' homes in the neighborhood.



Our "pursuit of happiness" in our new home will be affected not by the hotel's design (now pretty pictures on paper) but the composition of hotel guests and personnel who have no vested interest in our community. After a stressful day in meetings, the likelihood of dinner and drinking to let off steam by business people-guests could lead to late-night boisterous behavior in the parking lot across from our bedroom. By the time the "hotel manager" arrives (if at all) to bring order and quiet, we will have been awakened and disturbed for the remainder of the night-not the lifestyle we now enjoy.

To reiterate my statements before you on May 2, "The area is saturated with hotels. The hotel you approved in King Farm is far away from residences. And, the hotel proposed at Kentlands was denied by the City of Gaithersburg." (Please see the attached records documenting that application.) DO WE DESERVE ANYTHING LESS? When an applicant proposed to build an extended stay hotel in Gaithersburg, the proposal was rejected because of the potential use by Montgomery County for low income housing. The risk also exists that Lerner, given an "offer they can't refuse" will sell to a buyer wanting to convert the developer's extended stay hotel suites to low income housing despite Mr.Fuccillo's claim that "I'll be here forever." (No assurance is made in the MOU that Lerner will not sell to an entity incompatible with Falls Grove!!!) All companies, no matter how large, divest themselves of properties for the right price. We are aware of the need for low income housing, but is it appropriate in the Falls Grove community?

Again, we urge you to act in the best interests of Falls Grove and the City of Rockville and deny this petition.

Elayne and Stanley Scheiner
701 Falls Grove Dr. #311
May 13, 2005

Routed To:

☒ Council
☐ City Clerk
☒ City Manager

☒ City Attorney
☐ Council Support Specialist
☒ Other Act
Deane

Patricia A. Harris
301 215 6613
patricia.harris@hklaw.com

Exhibit # 12

Subject: CPD99-0004A

Public Hearing Date: 5/2/05

May 16, 2005

The Honorable Larry Giammo and
Members of the City Council
City Hall
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850

Re: Falls Grove – Concept Plan Amendment

Dear Mayor Giammo and Members of the City Council:

On behalf of Lerner Enterprises (“Applicant”), we wanted to take this opportunity to respond to two issues raised by Councilwoman Hoffman and Mayor Giammo at the close of the May 2nd hearing on the proposed amendment to the Falls Grove Concept Plan. These issues pertain to the proposed use of the Woodhill Road parcel and the desire for the Falls Grove community to accommodate a child care center.

Woodhill Road Parcel

Councilwoman Hoffman inquired as to whether the Jewish Social Services, with whom Lerner is presently negotiating, was the appropriate tenant for the Woodhill Road building, given the City's desire for more research and development type uses. We are pleased to indicate that this issue was focused on intensely during the original Concept Plan approval process and to that end, the Falls Grove Concept Plan Resolution has a built-in mechanism to ensure that upon build out, a balance is struck between traditional office use and research and development use, as defined therein. More specifically, the Falls Grove Concept Plan Resolution No. 1-00 approving Falls Grove, provides for a total of 950,000 square feet of office use and R&D use within the community, of which a maximum of 425,000 square feet is permitted to be general office space. Therefore, we believe the issue raised by Councilwoman Hoffman has been satisfied by the original Concept Plan approval.

Child Care Center

The Applicant has asked, as part of its Concept Plan amendment, that a child care facility be approved as an allowable use within the community. They have done so as a direct result of the fact that without the Mayor and Council's approval, such a use is not permitted. At the present

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time, the Applicant has not designated a child care agency or facility to operate within Falls Grove. As with other allowable uses, it hopes to avail itself of that opportunity in the future. Mayor Giammo and other members of the Council expressed strong interest in a child care center within the Falls Grove community at some point and your desire is duly noted. The Applicant has taken the first step toward this objective by proposing an amendment to the Concept Plan which would provide for a child care facility as a permitted use.

At this time however, it is difficult for the Applicant to know when that use will materialize. At one time several years ago, the Applicant had considered childcare use within Falls Grove, and in fact initiated the necessary approvals to accommodate such a use. For the record, as of this date, ten accredited child care centers have been established within one mile of Falls Grove. Thus, it appears to the Applicant that the immediate demand for child care in the area has significantly decreased. Perhaps the strongest indication that there is not an immediate need for a child care facility in this area is the property directly across Darnestown Road from Falls Grove, which has been approved for child care use for several years, yet has never gone forward. Nonetheless, the Applicant will continue to work toward a child care facility.

Summary

The proposed Concept Plan Amendment has strong support from the community.

The clear benefits of the Concept Plan Amendment are recognized by the vast majority of the Falls Grove residents, and in particular, by those residents living in the nearby condominiums, as was evidenced by their testimony at the public hearing and their supporting correspondence.

We appreciate your consideration of this important issue and respectfully request your approval of the proposed Concept Plan Amendment.

Sincerely yours,

HOLLAND & KNIGHT LLP

A handwritten signature in black ink, appearing to read "Patricia A. Harris", is written over the typed name.

Patricia A. Harris



City of Rockville

MEMORANDUM

April 20, 2005

TO: Mayor and Council

FROM: Planning Commission

SUBJECT: Recommendation on Concept Plan Amendment CPD1999-0004B; Falls Grove Associates, applicant. To allow 125,000 to 150,000 square feet of hotel in lieu of equal amount of office space; allow office development on a residual multi-family parcel on Woodhill Road; add child care facility as an approved use in Falls Grove; transfer unused retail from the Village Center to two office parcels adjacent to Blackwell Road. The Planning Commission will be making a recommendation to the Mayor and Council for its review of the proposal on May 2, 2005. This is the second meeting in front of the Planning Commission on this item.

At its meeting on April 13, 2005 the Planning Commission reviewed the above referenced Comprehensive Planned Development Amendment application. The proposal is revise the land use designations for several parcels in the Falls Grove development, as detailed above.

The Planning Staff Report recommended approval of the proposed amendment. The Planning Commission received comments from the staff, the applicant, and members of the public. The applicant has offered to forego the ability to develop 75 of the remaining 119 units currently still available to build per the Concept Plan. They have constructed all of the 745 multi-family units approved by the Concept Plan. Any of the remaining units will have to be either one-family attached or detached units.

A number of citizens spoke both for and against the proposed amendment. Those who spoke in support of the application cited the added amenities the applicant will provide and less traffic impact than the office building. Those who spoke against the proposal expressed concerns about having a hotel in a residential area, security, building mass, and parking impact.

In deliberations, Commissioner Hilton noted that the developer had done a very poor job of involving the community in process. Commissioner Johnson noted that there were strong feelings on both sides of the issue, but that the proposed amendment is the best way to go and it will have a lesser impact overall. Commissioner Ostell originally opposed the hotel, but notes the market forces at work. To say no for open space for a few years is not appropriate.

Page 2
April 20, 2005

Commissioner Wiener stated that the hotel proposal is better than the original office designation. It is a better use of the property and the lesser of two evils. Commissioner Hilton added that the City works hard for transitions that minimize impacts. The proposed amendment provides a much milder transition than 2 office buildings.

Therefore, on a motion by Commissioner Johnson, seconded by Commissioner Wiener, the Planning Commission voted 4 to 0, with 3 absent, to recommend approval of Concept Plan Amendment CPD1999-0004B.

/dem

cc: Planning Commission




City of Rockville

MEMORANDUM

April 7, 2005

TO: Planning Commission

FROM: Scott E. Parker, AICP, Acting Chief of Planning 

SUBJECT: Re-evaluation of the Fallsgrove Concept Plan Amendment, CPD1999-0004B; 1. To allow a hotel of 125,000 to 150,000 square feet in lieu of a corresponding amount of office. 2. Permit office development in lieu of multi family development on a residual multi-family residential parcel. 3. Allow a child care facility as an approved use in Fallsgrove. 4. Transfer unused retail space from the Village Center to one of the neighboring commercial parcels.

BACKGROUND

On February 22, 2000, the Mayor and Council approved CPD99-0004, authorizing development on the former Thomas Farm site, now known as Fallsgrove. The approval authorized a total of 1,530 dwelling units, 150,000 square feet of commercial retail and 950,000 square feet of office/research and development space. Application was a Comprehensive Planned Development similar to King Farm

There have been a total of 1,411 units approved through the residential series of Detailed Applications for Fallsgrove, which represents the total number of units they are planning to build. Only one 75,000 square foot office building has been constructed, which is located at the 138,000 square-foot Village Center (completed). The Fallsgrove Corporate Center, a 235,000 square foot signature office building, has been approved. Building permits are pending.

On December 1, 2004, this series of amendment requests were presented to the Planning Commission for a recommendation to the Mayor and Council. After considering the presentation and listening to testimony, the Planning Commission voted to recommend denial of the hotel use and the office on Woodhill Road. The Commission, however, recommended approval of the daycare use and the additional accessory retail use, as outlined within this memo.

Since this meeting, the applicant has held seven neighborhood meetings, as well as two "mini design charrettes," so that comments could be elicited from citizens and an accord could be

reached with the adjoining neighbors of this property. The applicant is representing, through the attached Memorandum of Understanding (MOU), that the issues formerly associated with this project have been successfully mitigated to the satisfaction of the majority of residents near this property (attachment 1).

PROPOSAL and ANALYSIS

Proposal

The applicants are proposing a change to the Concept Plan that has three parts, which are as follows:

1. To allow a hotel of 125,000 to 150,000 square feet in lieu of a corresponding amount of office.
2. Permit office development in lieu of multi family development on a residual residential parcel
3. Allow a child care facility as an approved use in Fallsgrove.
4. Transfer unused retail space (approximately 20,000 square feet) from the Village Center to one of the neighboring commercial parcels.

Analysis

The first request of this Concept Plan amendment is to allow a hotel use in lieu of 125,000 – 150,000 square feet of office. The hotel would be designated on two potential office sites, both of which are on Shady Grove Road, flanking both sides of the new Blackwell Road as it enters Fallsgrove. The hotel would be allowed on only one of the parcels.

As part of this application, the applicant has submitted a traffic statement that indicates there will be a reduction in traffic trips associated with a hotel in lieu of office space. It should be noted that the allowable 950,000 square feet of for Fallsgrove was divided between 425,000 square feet of office and 425,000 square feet of R & D uses, as defined within the Concept Plan. Fallsgrove has stated that the office space surrendered through this amendment would be deducted equally from the amount of approved office and the amount of approved R & D space.

It has also been presented to staff that a hotel on this site, given market conditions and site layout, would be significantly smaller than an office building on this site. This would ultimately reduce any parking provided on the site significantly. The applicant has stated that the hotel will be surface parked exclusively, while a 125-foot office building on this site could potentially have multiple stories of parking within a structure.

The second part of the request is to allow office construction on a small parcel of land at the intersection of Woodhill Road and West Montgomery Avenue. This parcel is currently designated multi-family by the Concept Plan. The applicant has stated that no more multi-family

can be built on Falls Grove by Resolution, and that this parcel is ideal for a small (three or four story) office building.

The third part of the request is to allow a child care facility as an approved use within Falls Grove. Currently, the Falls Grove Concept Plan does not allow Institutional Uses, of which child care is considered under Section 25-643(5)a.

The fourth part of the request is to allow the approximately 20,000 square feet of retail that was not built with the approved Village Center be allowed to be potentially built on one of the two aforementioned office parcels.

As part of the consideration of this amendment, Falls Grove has offered to abandon and relinquish the ability to develop 75 units of the remaining 119 units currently still available to build per the Concept plan. To date, Falls Grove has constructed 1,411 units of the approved 1,530. It should be noted that no more multi-family development can be built, because their Concept Plan mandated cap of 745 has been attained. Any remaining development would have to take the form of single family attached or detached.

STAFF RECOMMENDATION

1. Request to allow 125,000 -150,000-hotel use – Staff recommends approval of this change. The Concept plan that approved Falls Grove did not specify the amount of office that could be built on any one parcel. The approval was for an overall total square footage, regulated only by height, which in the case of office is 125 feet. This parcel was designated for office, and could be developed with a 125-foot tall building with accompanying parking structure. Conversely, the type of hotel that would be built on this parcel is unlikely to be this tall, given the market demands for hotel uses in the area, and the type of facility contemplated by the applicant. Therefore, parking for a hotel use would be significantly less.

Staff has consistently informed the applicant that a thorough evaluation of any parking associated with an office building would be done to ensure the mitigation of any potential negative effects on adjacent residential properties. This is consistent given the applicant's statement that a hotel for this area would have all surface parking, while an office building would have potentially have a significant structure.

Also, a hotel generates less overall traffic trips than an office. While it is true that trips associated with a hotel are potentially spread out over a wider time frame of the day, staff feels that the overall reduction of trips, and parking, is more significant.

Staff also feels that this use is appropriate for the area and will provide a needed neighborhood and community resource.

Staff originally recommended approval of this part of the amendment, and we continue to do so..

2. Permit office development in lieu of multi-family development on a residual parcel – The size and configuration of this parcel, combined with the five-story office buildings and four story residential structures adjacent, makes it an appropriate place for a small office building. The Transco gas right-of-way easement on the property creates a difficult development issue that is more significant with residential development than it is for commercial. An office building on this property would be low scale, conducive to neighborhood-serving medical or service type uses, including, but not limited to, a single tenant user.

Staff recommends approval of this part of the amendment, with a condition that the height of the building be limited to a maximum of four stories, commensurate with the adjacent office buildings and the adjacent four-story multi-family rental component.

3. Allow a child care facility as an approved use in Falls Grove – This use was recommended for approval at the December 1, 2004 meeting, and staff supports this decision.

4. Transfer unused retail space from the Village Center to one of the neighboring commercial parcels – The supported recommendation was to permit 14,000 square feet of unused retail from the Village Center to be located on other commercially designated properties. Staff supports this, as well.

Staff previously recommended approval of this item, as amended, and we continue to do so.

NOTIFICATION:

Notices were sent to approximately 1,275 residences and businesses. As required by the Zoning Ordinance, certified mail was sent to approximately 106 property owners adjacent to Falls Grove

Attachments

1. Applicant's justification package

Holland + Knight

Tel 301 654 7800
Fax 301 656 3978

Holland & Knight LLP
3 Bethesda Metro Center, Suite 800
Bethesda, MD 20814
www.hklaw.com

Patricia A. Harris
301 215 6613
patricia.harris@hklaw.com

April 22, 2005

VIA HAND DELIVERY

The Honorable Larry Giammo and
Members of the City Council
City Hall
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850

Re: Fallsgrove – Concept Plan Amendment

Dear Mayor Giammo and Members of the City Council:

On behalf of Fallsgrove Associates (the "Applicant"), this letter is submitted in connection with the May 2, 2005 public hearing on the requested Fallsgrove Concept Plan Amendment. The Concept Plan Amendment would allow the following:

- a hotel, in lieu of a corresponding amount of approved office/R&D square footage;
- an office, in lieu of the approved multi-family development on the remaining residential parcel on Woodhill Road;
- a child day care facility as an approved use within Fallsgrove; and
- the transfer of the balance of unused retail space from the Village Center to the neighboring commercially designated parcels.

The Planning Commission at its April 13, 2005 meeting unanimously recommended the approval of the Concept Plan Amendment. For your information, enclosed please find the materials submitted to the Planning Commission in advance of their meeting. These materials further describe the proposed Amendment and document the significant progress the Applicant made in reaching an agreement with the majority of the condominium residents – the Fallsgrove residents located in closest proximity to the affected parcels.

Mayor Larry Giammo
April 22, 2005
Page 2

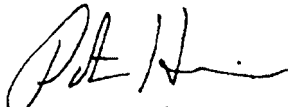
Also enclosed is an executed Agreement between the Applicant and the Condominium Residences I and II. This final Agreement incorporates the terms of the Memorandum of Understanding included in the Planning Commission's materials, and serves as the final understanding between the parties.

The Applicant and Condominium Residences I and II have worked diligently over the past several months in connection with the proposed Amendment and we are very pleased with the results of these efforts as reflected in the Agreement. We look forward to presenting the proposed Concept Plan Amendment and the Agreement to you and detailing the significant community outreach that was involved in this effort.

We thank you in advance for your thoughtful consideration of the requested Concept Plan Amendment.

Sincerely yours,

HOLLAND & KNIGHT LLP



Patricia Harris

Enclosures

cc: Mr. Deane Mellander
Mr. Nolan Sklute
Mr. Thiel Sullivan
Mr. Ricke Ziedman
Mr. Art Fuccillo
Mr. Eric Hart

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AGREEMENT

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* * *

This Agreement (hereafter "Agreement") made this 13th day of April, 2005, by and between SGB Office Group, LLC, a Maryland Limited Liability Company, an affiliate of Lerner Enterprises, LLC, (hereafter referred to as "Developer/Applicant"), and Condominium Residences I of Fallsgrave, Inc. (hereafter referred to as "CR I"), and Condominium Residences II of Fallsgrave, Inc. (hereafter referred to as "CR II"),

WITNESSETH

WHEREAS, the Developer/Applicant was one of the developers of real property within a comprehensive planned development of approximately 253.94 acres, more or less, known as Fallsgrave within the corporate limits of the City of Rockville, Maryland,

WHEREAS, the development of real property within Fallsgrave must be in accordance with a Concept Plan adopted by the Mayor and Council of the City of Rockville on February 22, 2000, identified as Resolution No. 1-00 (hereafter the "Fallsgrave Concept Plan"),

WHEREAS, the development of real property as authorized by the Fallsgrave Concept Plan require approval of Detailed Applications by the City of Rockville.

WHEREAS, SGB Office Group, LLC, is the developer of a parcel of land within Fallsgrave which is denoted on Exhibit A to this Agreement as geographic area "A", and which is identified on Exhibit 18, entitled "Land Use Concept Plan," to Resolution No. 1-00 as "Office/R&D #6" (hereafter "Parcel A"),

WHEREAS, SGB Office Group, LLC, is the developer of a parcel of land within Fallsgrave which is denoted on Exhibit A to this Agreement as geographic area "B", and which is identified on Exhibit 18, entitled "Land Use Concept Plan," to Resolution No. 1-00 as "Office/R&D #5" (hereafter "Parcel B"),

WHEREAS, Developer/Applicant is a member of Fallsgrave Associates, LLC,

the owner of a parcel of land within Falls Grove which is denoted on Exhibit A to this Agreement as geographic area "C", and is, generally, a triangular shaped parcel of land in the southwestern quadrant of the intersection of Wood Hill Drive and West Montgomery Avenue (Maryland Route 28) (hereafter "Parcel C"),

WHEREAS, the type and form of development proposed for Parcel A and Parcel C by Developer/Applicant necessitate an amendment to the Falls Grove Concept Plan,

WHEREAS, the Falls Grove Concept Plan may be amended under the provisions of the Zoning Ordinance of the City of Rockville by the Mayor and Council of the City of Rockville after a recommendation from the Planning Commission of the said City,

WHEREAS, the Falls Grove Associates has filed with the City of Rockville an application to amend the Falls Grove Concept Plan to permit development of Parcel A and Parcel C as desired by the Developer/Applicant which is identified as "CPD1999-0004B" (hereafter "Application CPD 1999-0004B"),

WHEREAS, the Developer/Applicant wishes to have the support of the residents of the Condominium Residences of Falls Grove for Application CPD1999-0004B to amend Falls Grove Concept Plan to, among other things, authorize development of Parcels A, and C as desired by the Developer/Applicant,

WHEREAS, the Developer/Applicant has made certain assurances and commitments to the Condominium Residences I and Condominium Residences II of Falls Grove in exchange for the CR I and CR II support for Application DPD1999-0004B and the subsequent Detailed Application,

WHEREAS, the CR I and CR II agree to support Application CPD1999-0004B and the subsequent Detailed Application provided the Developer/Applicant agrees to the assurances and commitments provided for herein,

NOW, THEREFORE, upon consideration of the foregoing and the promises contained herein, the receipt and adequacy of which is hereby acknowledged, the parties do hereby agree as follows:

1. The provisions of this Agreement concerning land use matters set forth herein are subject, in each instance, to the review and approval of the City of Rockville pursuant to its rules and regulations.

2. This Agreement shall be binding upon each of the parties hereto, their employers, agents, successors, and assigns, except that the tenants of any commercial property within the Fallsgrrove development shall not be bound by the responsibilities and obligations of Developer/Applicant provided for under this Agreement.

3. A. This Agreement and each and every provision contained herein, is expressly contingent, upon the following:

(i) approval of Application CPD1999-0004B (and the expiration of all applicable appeal periods) providing for a hotel on Parcel A and an office use on Parcel C, both identified on attached Exhibit "A";

(ii) approval of the Detailed Application for a Hotel building(s) on Parcel A (and the expiration of all applicable appeal periods);

(iii) approval of the Detailed Application for an Office Building on Parcel B (and the expiration of all applicable appeal periods);

(iv) approval of the Detailed Application for an Office Building on Parcel C (and the expiration of all applicable approval periods);
and

(v) development of Parcel A in accordance with Application CPD1999-0004B and the Detailed Applications for hotel use.

B. In the event the items identified above in subparagraphs (i), (ii), (iii), (iv) and (v) do not occur, Developer/Applicant shall have no responsibilities

or obligations under this Agreement and said Agreement shall become null and void.

C. Notwithstanding the foregoing, in the event item (i) as it pertains only to the office development on Parcel C, item (iii) or item (iv) identified above in paragraph 3A do not occur, all obligations of Developer/Applicant under this agreement shall remain in effect only if Developer/Applicant determines in its sole and absolute discretion to move forward with the development of Parcel A in accordance with the approved Detailed Applications set forth above in accordance with Application CPD1999-0004;

D. Notwithstanding any of the foregoing, in the event the development of Parcel A proceeds in accordance with Application CPD1999-0004, all of the terms of this agreement remain in full force and effect and are binding on the parties.

4. Provided nothing at law or by rule, regulation or ordinance would prevent the Developer/Applicant from undertaking such work on an immediate basis, the Developer/Applicant agrees that prior to the commencement of any work on any of the buildings included in any of the approved Detailed Applications for Parcel A or B, work shall commence on the expansion of the brick/wrought iron wall-fence that sporadically appears along certain sections of the perimeter of the Condominium Residences of Falls Grove in several areas marked on Exhibit B (back of Buildings I and II from Wood Hill to Falls Grove, between exterior garages on the Blackwell side of Building II, and certain sections along Wood Hill) and, in addition thereto, work shall commence on the installation of the wrought-iron traffic gates at the entrances to the Condominium Residences of Falls Grove —the design to be developed in cooperation with the boards of directors of CR I and CR II, one illustration of which is shown on Exhibit C. (This matter should help alleviate security concerns, and requires city approval). All at no cost to the Condominium Residences of Falls Grove or its residents. Installation of the aforesaid

traffic gates and wrought iron fence will be completed as expeditiously as possible. After installation of the foregoing improvements in this paragraph 4, CR I and CR II shall be responsible for the ongoing maintenance and repair of all such improvements, and the Developer/Applicant shall have no responsibility or liability for same.

5. Provided nothing has been initiated at law or by rule, regulation or ordinance that would prevent the Developer/Applicant from undertaking such work on an immediate basis, the Developer/Applicant agrees that prior to the commencement of any work on any of the buildings under any of the approved Detailed Applications for Parcel A or B, construction shall commence on a parking lot for 20 vehicles on Parcel B between the parking garage and Wood Hill Road for the exclusive use of the residences of the Condominium Residences and/or their guests, as shown on attached Exhibit D. Construction of the aforesaid parking lot will be completed as expeditiously as possible. All liability associated with the use of the lot, lighting, maintenance and repairs, and snow removal will be the responsibility of the Developer/Applicant.

6. The parking garage on Parcel B will not exceed two and one half levels above grade level as shown on Exhibit E, with any additional levels to be below grade.

7. The parking garage on Parcel B will be screened with a 3 to 7 foot berm (to the maximum extent feasible) and landscaped with evergreens as shown on attached Exhibit E. Additionally a lattice-work and evergreen arrangement will be installed along the edge of the garage roof line and in between the floors of the parking garage on the side facing Wood Hill Road. While the parking facility will not be invisible, its appearance will be significantly shielded from view and enhanced.

8. The height of the office building on Parcel B will not exceed five stories.

9. No entrance for the Office Building or parking structure on Parcel B will be located on Wood Hill Road. The only entrance on Wood Hill Road for Parcel B will be for the parking lot reserved exclusively for the use of the residents and/or guests of the Condominium Residences.

10. Developer/Applicant will pursue efforts to locate on Shady Grove Road an entrance into and/or an exit out of the parking structure on Parcel B, as shown on Exhibit A.

11. For a period of fifteen years, , from the date the office building on parcel B is completed and available for occupancy, Developer/Applicant will ensure that no daily parking fees are charged for use of the unreserved parking spaces in the parking structure serving Parcel B and that no more than 65% of such spaces shall be reserved pre-paid spaces.

12. The retail/restaurant uses in the Office Building on Parcel B will have front door entrances on Shady Grove Road only (with the corner spaces having emergency access points on the sides of the building if required by code and, except for food/restaurant uses and service oriented uses, such as a Red Door Salon, will not exceed 3,000 square feet for any one retail tenant. No convenience store such as 7/11 will be allowed.

13. The height of the Hotel on Parcel A to be limited to 6 stories, as depicted in documents attached to application and in attached Exhibit F.

14. Signage on the side of the Hotel facing Blackwell Road will be subdued and placed in locations to make it less obtrusive. Building signage on the side of the Hotel facing Blackwell Road will be as shown on attached Exhibit F and may be illuminated (not flashing, single channel internally illuminated and or rear illuminated (halo style) letters). Monument signage may be erected at the entrance to the Hotel closest to Shady Grove Road or on Shady Grove Road.

15. Landscaping along Blackwell Road on the side of the Hotel will be enhanced to offer a more attractive view for the condominium residents as shown on Exhibit D.

16. Entrances into the Hotel parking lot will be placed on Blackwell Road to cause the least amount of interference with traffic along Blackwell Road; on the one end, as close to Shady Grove Road as possible and on the other end, as close to the property

line as is possible, as shown on Exhibit D.

17. Nighttime security for the Hotel will be provided. The hotel staff will be made aware of the citizens concerns and will be available 24 hours a day, 7 days a week to address any situation that may arise. Every effort will be made to assure that the parking area remains quiet after hours, with any problems or complaints to be handled immediately by the Hotel Manager on duty.

18. Hotel meeting rooms will be limited in size not to exceed in total when combined together 3,000 square feet, so as to discourage use for large third party social events. The kitchen facility on site will not be sized to handle the food preparation needs of any large social events.

19. The Hotel dumpster will be located out of sight from Blackwell Road. It will be screened from view and will be located at the rear of the Hotel along the southern property line as shown on exhibit D, with the approval of the City.

20. No ancillary retail establishments, other than what is usual and customary in lobby shops associated with limited service hotels will be allowed in the Hotel. The restaurant and bar area within the Hotel will primarily serve the guests and invitees of the Hotel.

21. Every effort will be made, including signage, to preclude anyone associated with the Hotel from parking on Blackwell Road. In the event that it is determined that a Hotel employee or guest is parking on Blackwell Road, Developer will follow City and County laws and ordinances for its removal.

22. The residents of the Condominium Residences of Falls Grove will continue to have the opportunity to be involved in the review of Hotel interior and exterior for compliance with quality standards prior to and during the Rockville Detailed Plan Application process. The Developer/Applicant will notify the presidents of each of the association boards of directors of Condominium Residences I and II when information is ready for their review.

23. The Condominium Residences of Falls Grove, will be provided with an opportunity to review all parking area site lighting decisions prior to and during the Detailed Application process for compliance with this Agreement. This includes lighting in the Hotel parking lot and in the office building parking structure on Parcel B. Applicant intends to use downward directed lighting at the lowest possible candlelight that assures public safety concerns and no less than is required by code. The Developer/Applicant will notify the presidents of each of the association boards of directors of Condominium Residences I and II when information is ready for their review.

24. The Hotel will provide a generator to ensure electricity to a portion of the Hotel, which area will be available to the Falls Grove Community residents in case of an area-wide blackout.

25. Use of the Hotel pool and exercise facility by residents of the Condominium Residences of Falls Grove will be at no charge during the hours of 9:00 A.M. to 5:00 P.M.

26. Use of the Hotel meeting room(s) (or restaurant area, if meeting rooms are needed by the hotel) by the condominium associations will be made available by the Hotel (no more often than twice per month), without charge on at least one week's prior notice for scheduling purposes.

27. Developer/Applicant will clean up debris on Parcel A, Parcel B and Parcel C on a continuing basis.

28. Developer/Applicant will continue its efforts with the City of Rockville to initiate operations of the multi-modal center.

29. The amount of retail space in the office building on Parcel B shall be limited to 19,000 square feet in total regardless of the amount approved by the City of Rockville.

30. The final architectural design of the Office Building and parking structure on Parcel B will be submitted to the presidents of each of the association boards of directors of Condominium Residences I and II for their review (so that they can assure compliance

with this memorandum of understanding) prior to and during the Detailed Application process.

31. No further changes or modifications to the overall Fallsgrove Comprehensive Plan shall be submitted to the City of Rockville which are in contravention of this Agreement without the expressed written approval of the boards of directors of the Condominium Residences I and Condominium Residences II of Fallsgrove.

32. If any party hereto believes any other party has breached an obligation under this Agreement, then such party may submit such breach, in writing to the other party and the parties shall meet at a mutually convenient time to discuss the alleged breach. If no sooner than ten (10) days after such meeting the party who has alleged to have breached this Agreement fails to commence to remedy such breach, any party may submit the dispute to binding arbitration (the "Arbitration"). If either party elects to submit a matter to such Arbitration, such party shall so notify the other party that such party has elected to have the issues submitted for determination by a three-member panel (the "Arbitrators") of the American Arbitration Association ("AAA"). The Arbitration shall be conducted in accordance with applicable Commercial Arbitration Rules of the AAA (the "Rules"), then in effect, except as follows:

- (a) The Arbitration shall be conducted by the office of the AAA in closest proximity to Fallsgrove.
- (b) The Arbitration shall be expedited to completion within thirty (30) days after notice from Tenant electing to arbitrate.
- (c) The three-member panel shall be selected according to the AAA Rules.
- (d) The Arbitrators shall determine only those issues presented by the parties.
- (e) If the Arbitrators determine that a party failed to act in accordance with this Agreement they shall direct that such breach be corrected by the defaulting party.
- (f) The Arbitrators shall order (i) reimbursement by the defaulting party of all actual costs and expenses incurred in the Arbitration

by the non-defaulting party, if default is found, or (ii) in the event arbitration is initiated and later withdrawn unilaterally by the alleging party or, upon final determination by the arbitrators default is not found, reimbursement by the alleging party of all actual costs and expenses incurred in the Arbitration by the non-alleging defending party, as the case may be. The Arbitrators shall review the claim for reimbursement of costs and expenses to determine the reasonableness and fairness of the actual costs and expenses and ensure they are not duplicitous.

- (g) Because of the expedited process agreed to herein, no discovery shall be allowed except for the following: seven (7) days prior to the scheduled hearing, the Parties shall exchange all documents which the Parties intend to use at the scheduled hearing.
- (h)
 - (i) After all of the evidence has been presented, and the hearing has concluded, the Arbitrators shall issue a ruling and/or an award within fifteen (15) days.
 - (ii) A judgment upon that award shall be enforceable in any court having jurisdiction of such matters.
 - (iii) The Arbitrators shall have no authority to award punitive damages or exemplary damages or other damages.
- (i) Each Party acknowledges that, by entering into this Agreement, each Party has agreed to arbitrate disputes and that such agreement necessarily entails a waiver of numerous rights that the Party might have were such disputes to be determined other than pursuant to Arbitration. Nonetheless, each Party knowingly and voluntarily waives all rights that it might otherwise have, including without limitation, the right to litigate such disputes in a state court forum or federal court forum having jurisdiction over this matter; the right to conduct discovery in accordance with the rules of the court in which the litigation concerning the dispute might otherwise be filed; the right to trial in such court, including without limitation the right to trial by jury; and the right to obtain certain damages and remedies that might not be awardable by the Arbitrators hereunder; and the right to an appeal of the Arbitrators' award. The foregoing enumeration of the rights waived by the Party are not intended to be exclusive, and the fact that any right is not specifically listed here shall have no effect on the fact that such right is waived by virtue of the agreement to arbitrate disputes as provided herein.

33. A copy of this Agreement, after it has been signed by the parties, shall be submitted to the City of Rockville for its consideration and incorporation of those

provisions that pertain to land use into any Application approval of CPD1999-0004B and all subsequent Detailed Applications for Parcels A, B or C.

34. The Attachments A, B, C, D, E, F are incorporated by reference into this Agreement and are enforceable.

35. This Agreement contains the entire agreement of the parties, and integrates all of the promises and understandings of the parties and constitutes their entire Agreement. The terms of this Agreement, including the WHEREAS clauses, are contractual, binding, and not mere recitals.

36. The terms of this Agreement may not be altered or amended except by written agreement signed by all of the parties (or their successors or assigns), and this provision itself may not be waived or amended except by written agreement signed by all of the parties.

37. Each party acknowledges that he/she has discussed the terms of this Agreement with advisers of their own choice, including legal counsel.

38. The parties further declare and represent that no promise, inducement, or agreement not herein expressed has been made to any of them, and that this Agreement contains the entire agreement by and among the parties.

39. This Agreement shall be governed by, and interpreted according to, the laws of the State of Maryland.

40. The parties further agree that in the event that additional documentation or instruments are needed to effectuate, in full or in part, the terms and conditions of this Agreement they will cooperate in executing such documents or instruments, and will execute such documents or instruments.

41. This Agreement shall be executed in four (4) originals, each of which shall be deemed an original for all purposes and shall be enforceable and binding on all of the parties hereto. Each such original Agreement shall be admissible into evidence as an original Agreement.

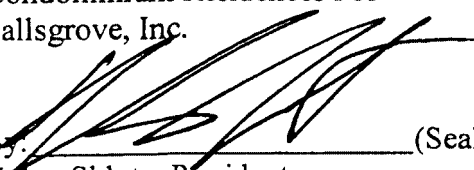
42. Each of the signatories to this Agreement expressly warrants that he/she has the necessary right and authority, and is fully empowered, to enter into this Agreement.

THE UNDERSIGNED HAVE READ THE FOREGOING AGREEMENT AND FULLY UNDERSTAND IT.

IN WITNESS WHEREOF, the parties have hereto set their hands and seals as of the date set forth above and intending to be legally bound hereby.


Condominiums:

Condominium Residences I of
Falls Grove, Inc.

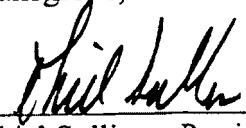
By:  (Seal)
Nolan Sklute, President

Developer/Applicant:

SBG Office Group, LLC, a
Maryland limited liability company

By:  (Seal)
Edward L. Cohen, Authorized
Representative

Condominium Residences II of
Falls Grove, Inc.

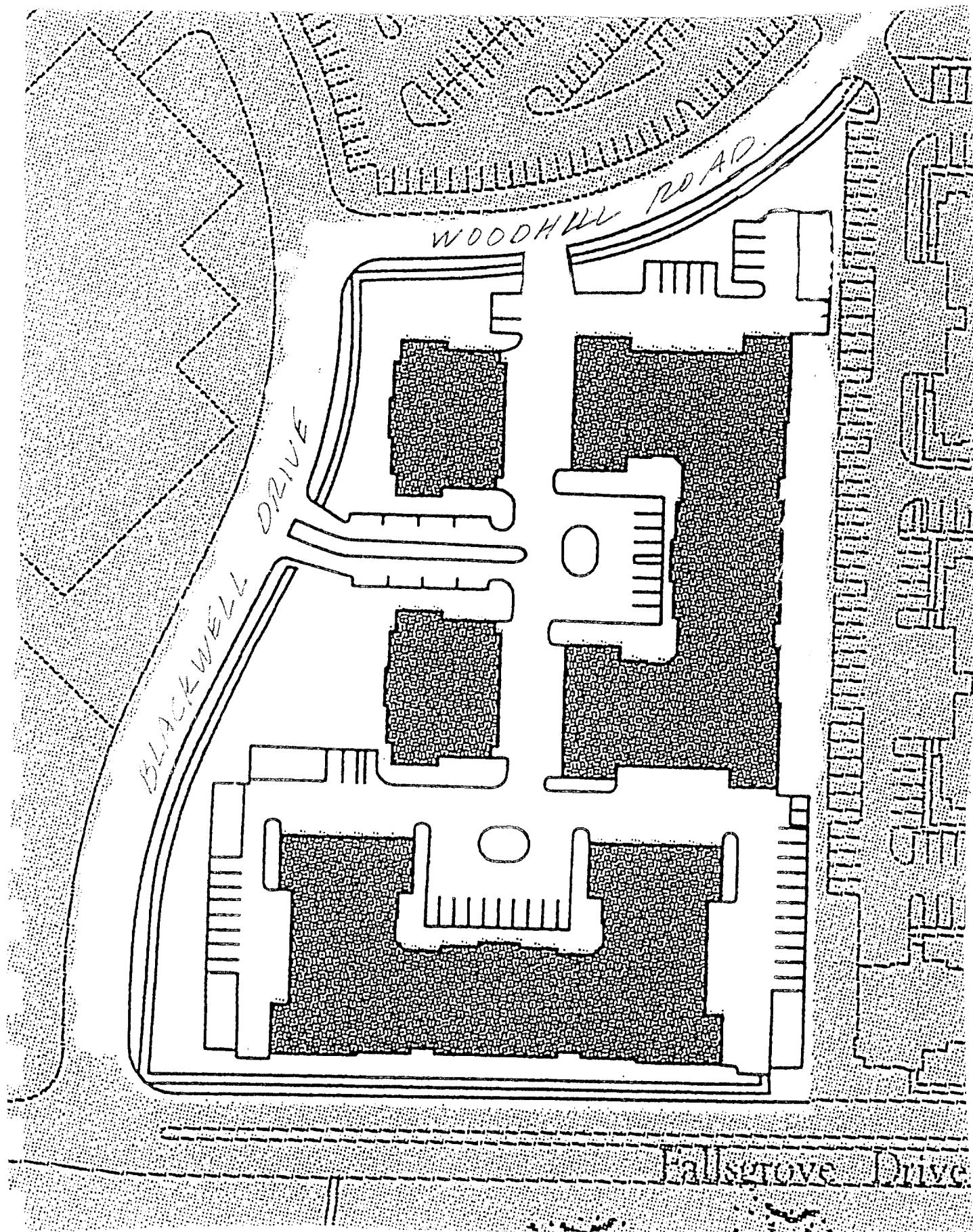
 (Seal)
Thiel Sullivan, President

4/13/2005 - 5:43 PM

2765928_v3



EXHIBIT "A"



DENOTES AVE OF PROPOSED FENCE. "B" EXHIBIT

Edw. B. "C" (over)

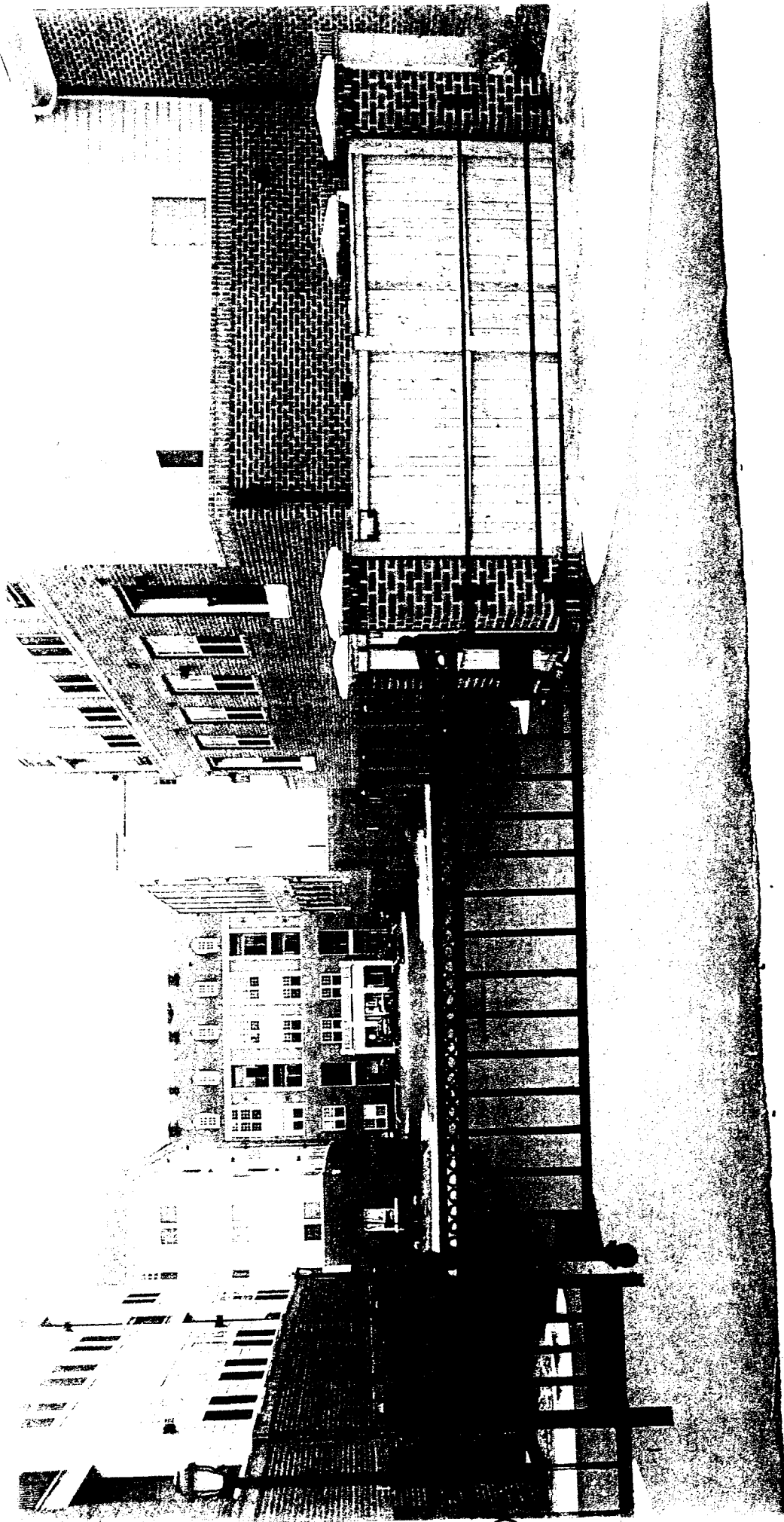
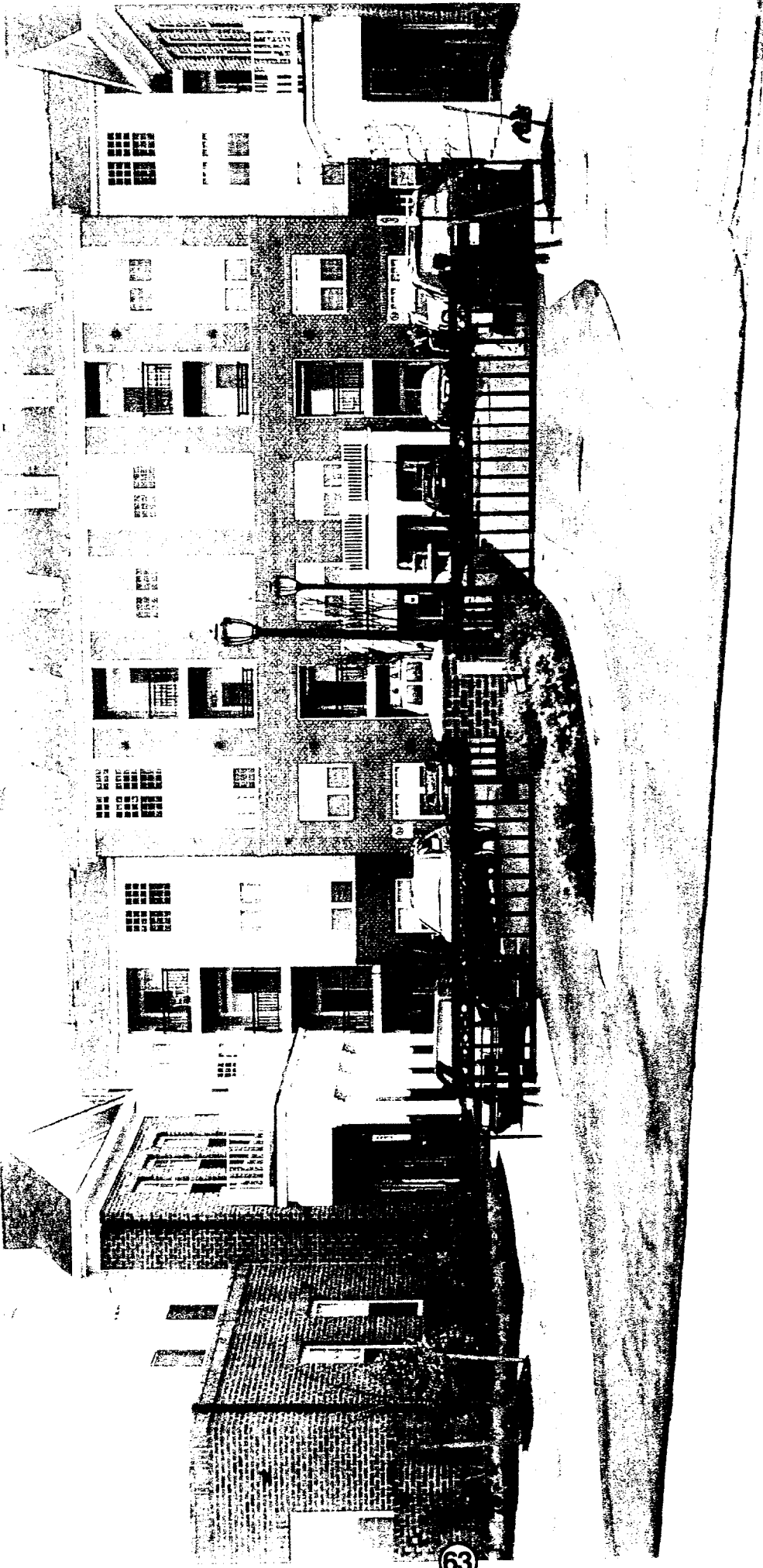
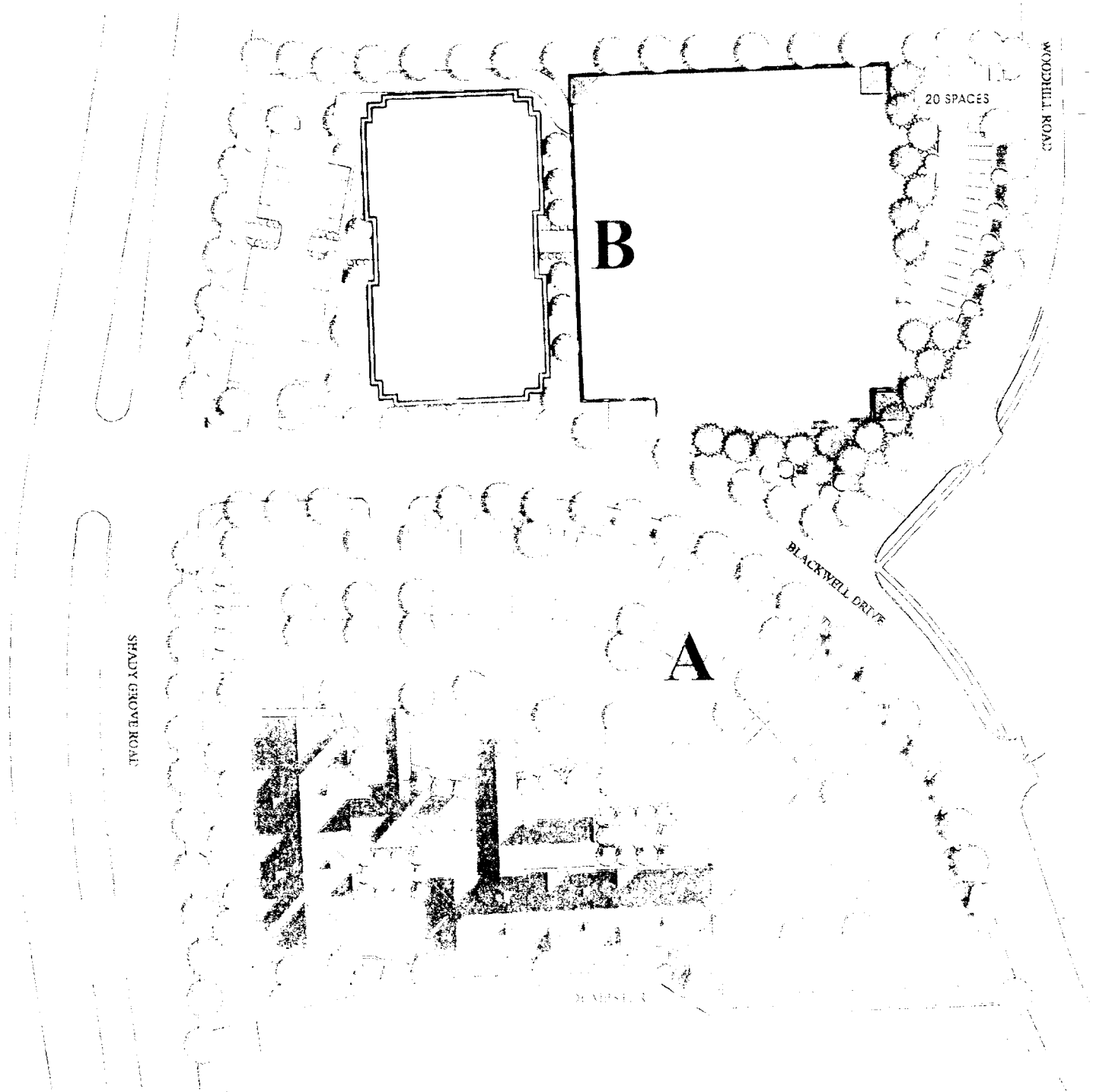


EXHIBIT "C" (2 of 2)





LEGEND

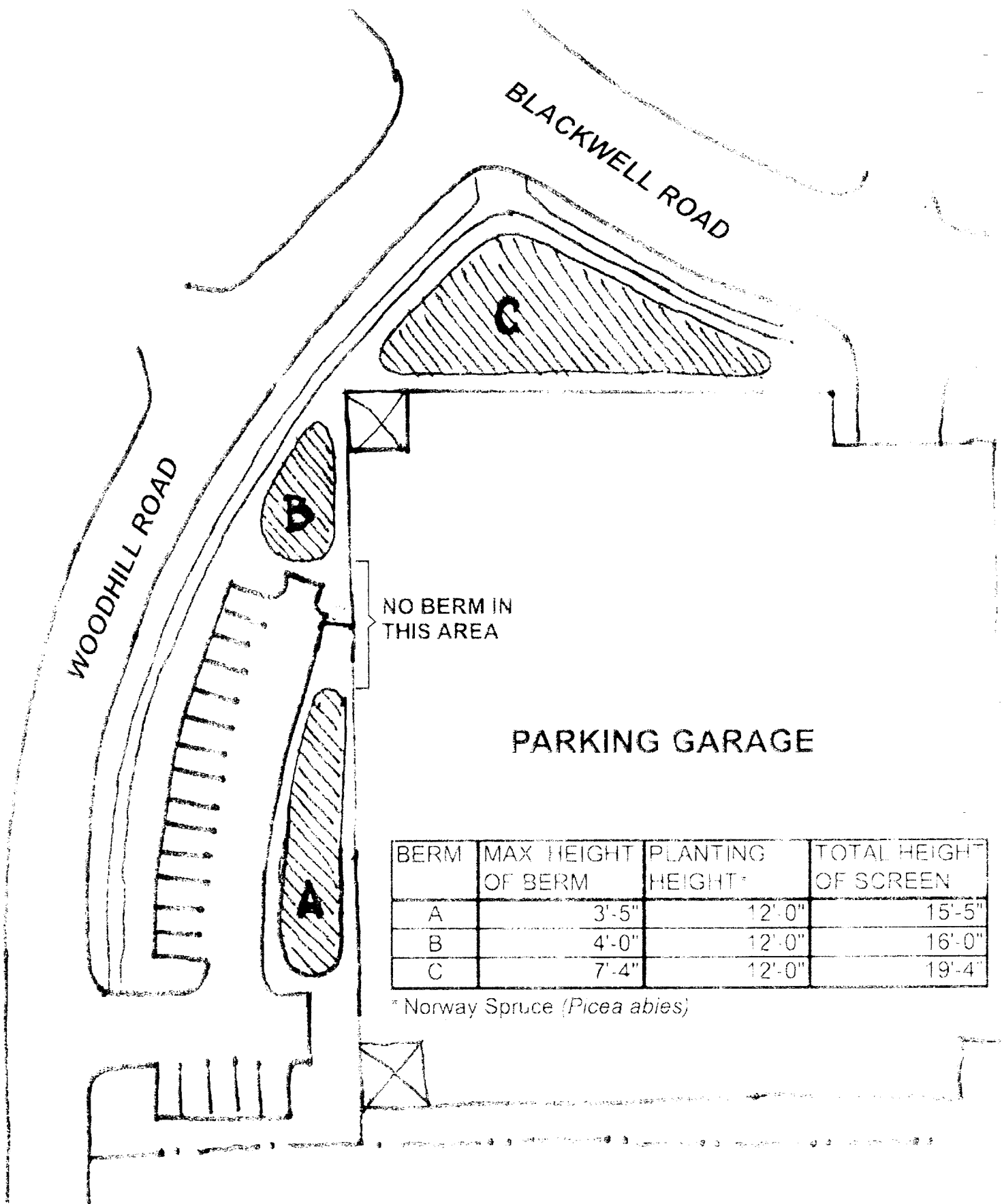
CANOPY TREES

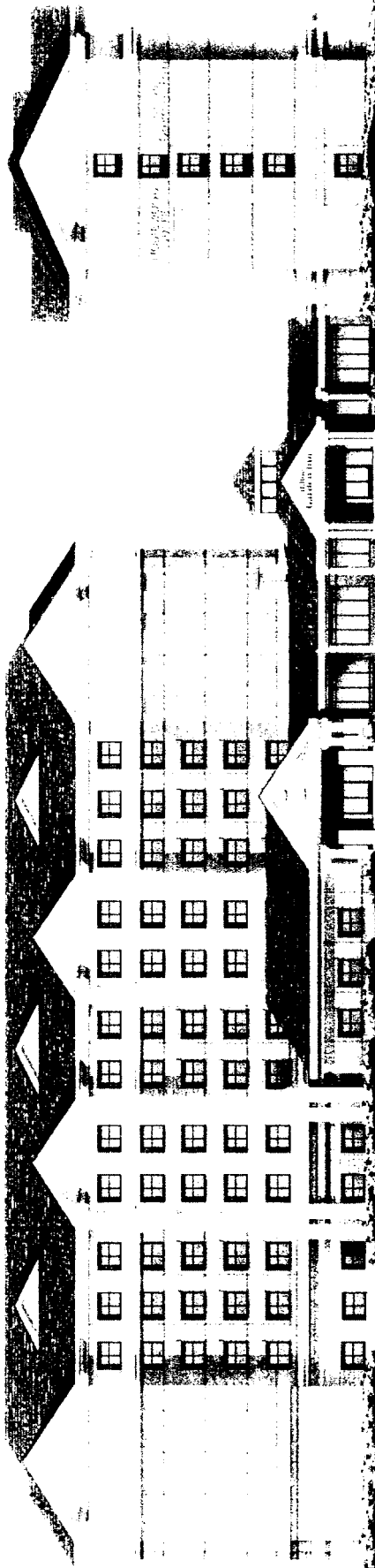
EVERGREEN TREES

ORNAMENTAL TREES

PARKER RODRIGUEZ, INC.
URBAN DESIGN LANDSCAPE ARCHITECTURE

LERNER





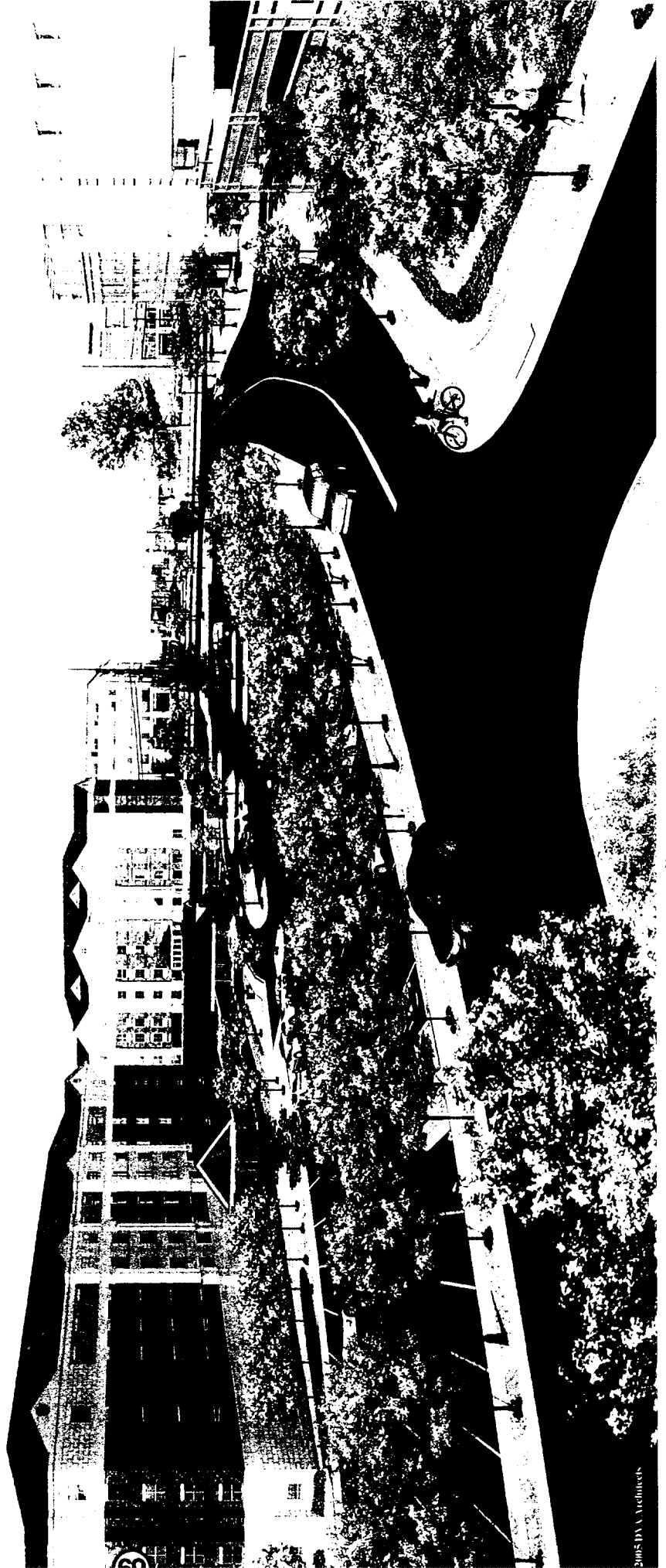
HILTON GARDEN INN / HOMEWOOD SUITES
ROCKVILLE, MARYLAND
HOMEWOOD SUITES FRONT ELEVATION



GORDON & GREENBERG
ARCHITECTS

EXHIBIT "F"

ADDITIONAL ILLUSTRATIVES
FOR
PLANNING COMMISSION CONSIDERATION



2005 DVA Architects

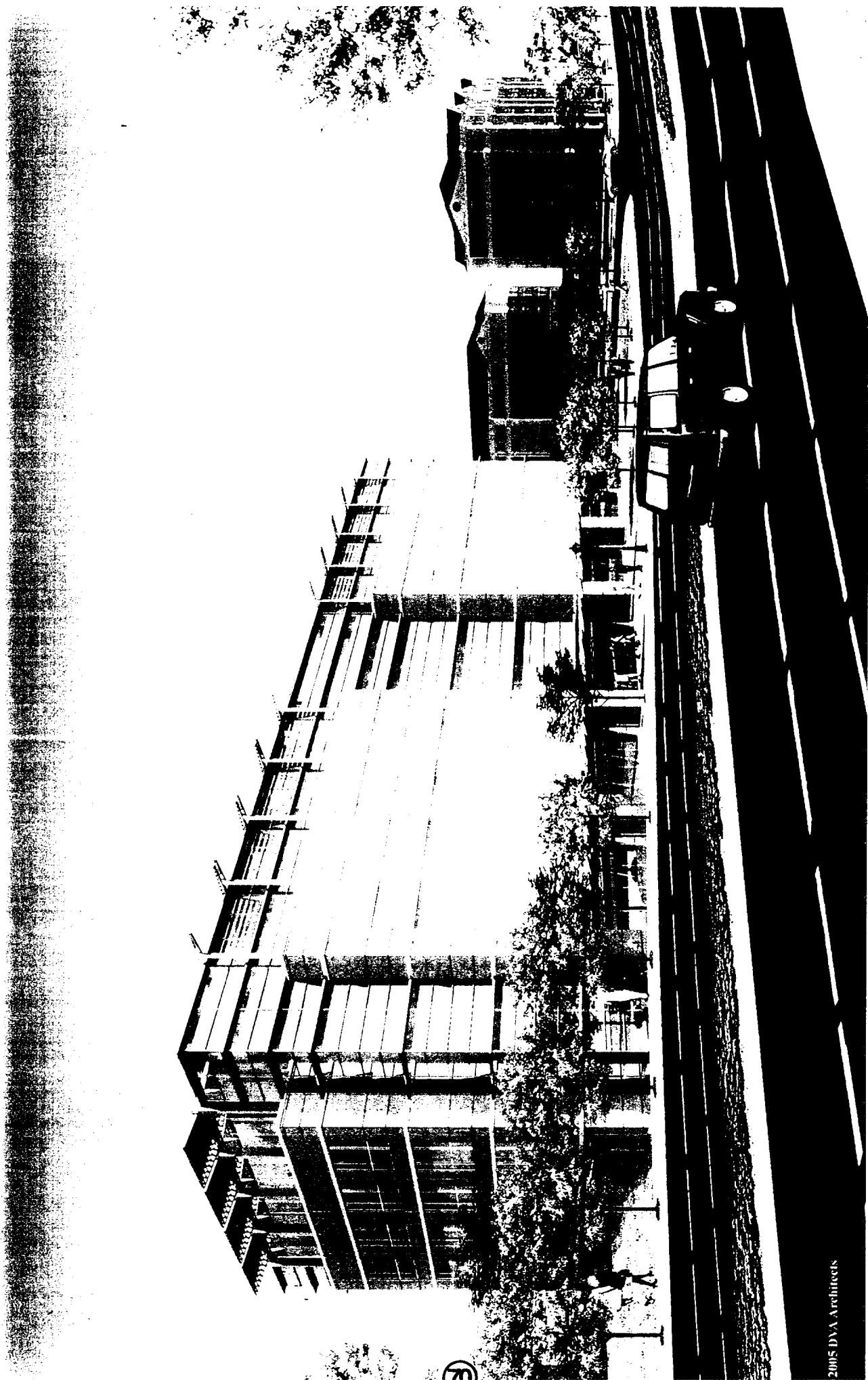
FALLSGROVE

3 story office building & Hotel Perspective view A

of Rockville, Maryland

Proposed Amendment
Illustrative

DVA ARCHITECTS, L.L.C.
ARCHITECT - PLANNING - INTERIOR
DESIGN - LANDSCAPE ARCHITECTURE
10000 FALLSGROVE DRIVE
FALLSGROVE, MD 20854



© 2005 DVA Architects

FALLSGROVE

5 story office building & Hotel - Perspective view C

DVA ARCHITECTS, L.L.C.
ARCHITECTS - PLANNING - INTERIORS
1000 W. 10TH STREET, SUITE 100
DENVER, COLORADO 80202
TEL: 303.733.1100

of Rockville, Maryland



© 2005 DVA Architects

City of Rockville, Maryland

FALLSGROVE

3 story & 9 story office building - Perspective view A

DVA ARCHITECTS, L.L.C.
 10000 Rockville Pike, Suite 100
 Rockville, Maryland 20850
 Tel: 301.761.1000 Fax: 301.761.1001

Approved Fallsgrove Density & Uses

- 1530 Residential Units
- 150,000 Square Feet of Retail
- 950,000 Square Feet of Office / R&D
- 10,000 Square Feet of Ancillary Retail within Office Development
- Office Building Heights up to 125 Feet

Traffic and Parking Comparisons

Use	Parking	Morning Trips	Evening Trips
200 Room Hotel	220 Spaces	116	124
150,000 SF Office	600 Spaces	286	298

Fallsgrove Marketing Brochure

FALLS CROVE

$$T: \mathbb{R}^n \rightarrow \mathbb{R}^n, T(x) = Ax + b$$

Luxury Condominiums
by the Bozanto/Porten Venture



There is a difference of opinion as to whether the above is a new species or a variety of *Myrica*.

Apartment Homes
by H.P.

Callegrove Village Center
by Lerner Enterprises

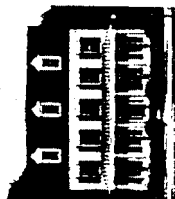


1. 1990年12月15日，在北京市召开的“中国环境与发展”高层论坛上，江泽民总书记发表了重要讲话，指出：“中国环境与发展问题，是一个关系到中华民族生存和发展的重大问题。我们决不能走一些发达国家走过的先污染后治理的老路。我们必须在经济发展的同时，把环境保护放在突出的位置，实行可持续发展战略。”

Single Family Homes
Fiskin/Youngstock Associates

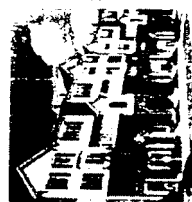
1

Atlanta Single Family Homes
Fidelity Investments Asset Manager



Abstract

**Two Level Condominiums
in Park Homes**



100

Courtyard Homes



[Faint, illegible handwritten text]

Single Family Homes



...the ... of ...

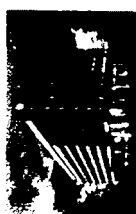
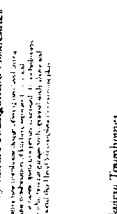
Class "A" Office Space
by Lester Enterprises

Figure 1. The effect of the number of trials on the mean accuracy of the responses ($n = 10$) as a function of the number of items presented at once. The error bars represent the standard error of the mean.

Village Center Townhomes
by Takin/Younger/Up Associates

1. The first of these is the fact that the system is not a simple one, and that it is not possible to describe it in a simple way. It is a complex system, and it is not possible to describe it in a simple way.

Low Level Patio 'Toxinomics'



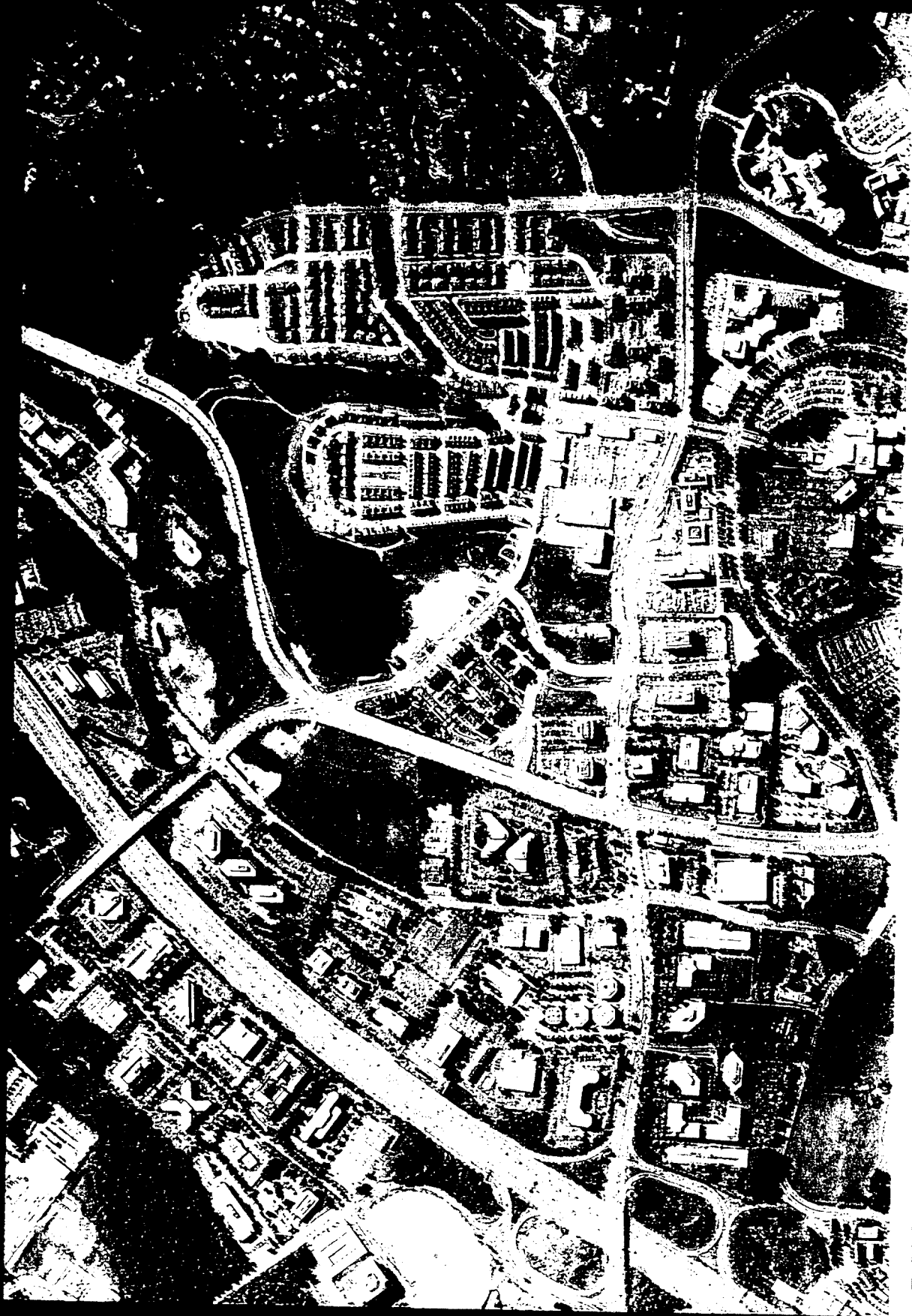
Youngentob Associates



from 1870 to 1880, the population of the United States increased from 23,000,000 to 36,000,000. The increase was due to the fact that the population of the United States was increasing at a rate of 1.5% per year.



THE
CONDOMINIUM
RESIDENCES
OF FALLSGROVE



FALLSGROVE

VICINITY MAP

DVA

DONNALLY VULFIC ASSOCIATES, L.L.C.

ARCHITECTURE • PLANNING • INTERIORS

400 PROFESSIONAL DRIVE, SUITE 100, CAITHENSBURG, NY 13049

PH: (315) 590-8800 FAX: (315) 590-8810 WWW.DVA-ARCH.COM

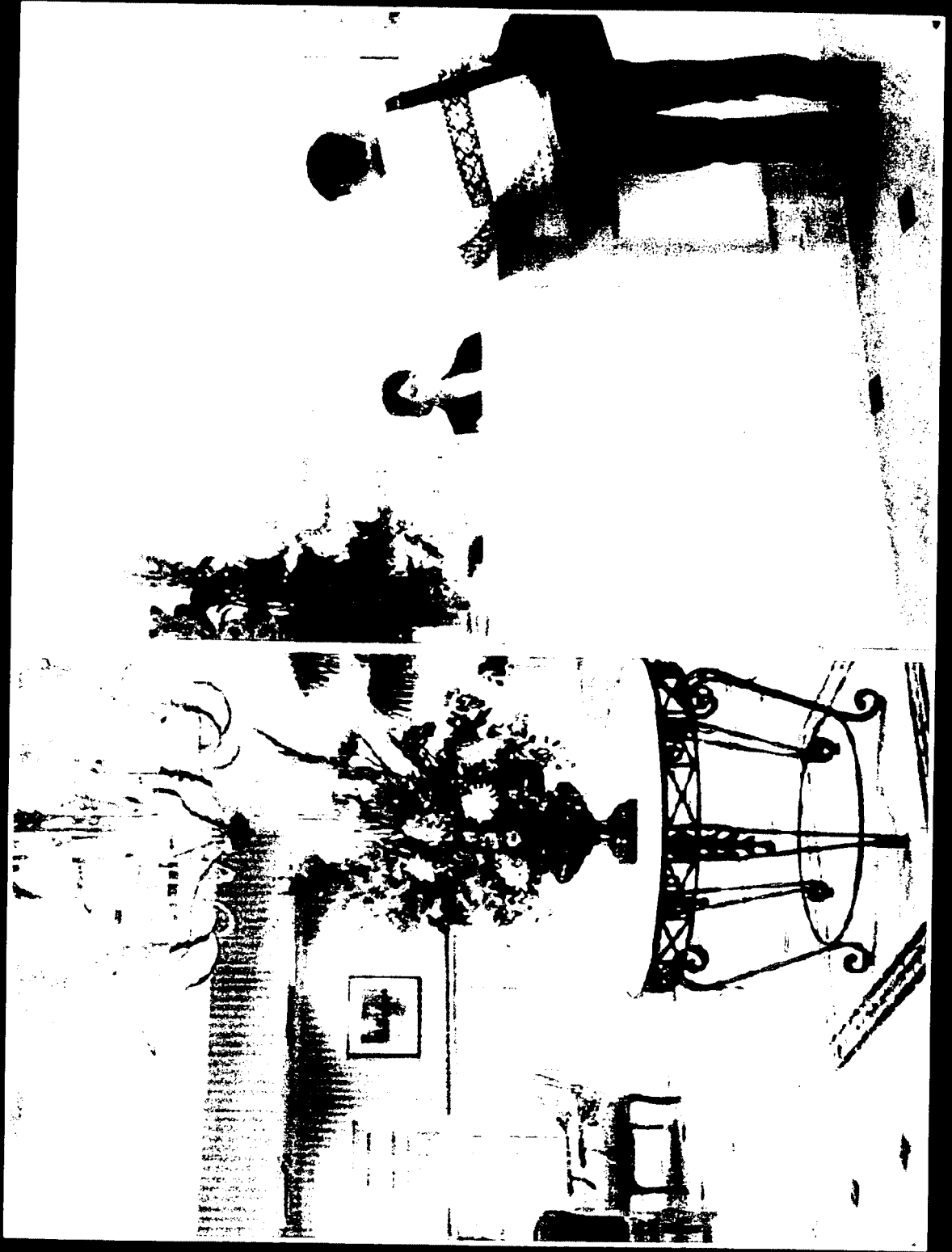
**The
power
of the
Hilton
name...**



HILTON











 Hilton









